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ABŪ ḪĀMID AL-GHAZĀLĪ'S JURISTIC DOCTRINE IN *AL-MUSTAṢFĀ MIN 'ILM AL-UṢŪL* WITH A TRANSLATION OF VOLUME ONE OF *AL-MUSTAṢFĀ MIN 'ILM AL-UṢŪL*

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PART 2

TRANSLATION OF *AL-MUSTAṢFĀ MIN 'ILM AL-UṢŪL* VOLUME ONE

بسم الله الرحمن الرحيم

IN THE NAME OF ALLAH,
THE MERCIFUL,
THE COMPASSIONATE

INVOCATION

All praise be to Allâh, the Almighty, the All-Powerful; the Protector, the Helper; the Subtle, the Overwhelming; the Avenger, the All-Forgiving; the Inner, the Outer; the First, the Last; He who made the *mind* the most important of treasures and provisions; and has made learning the most profitable of all trades and gains, the most eminent of honors and glory, and the most praiseworthy of journeys and retreats. Thus, by recording it, pens and inkwells have become distinguished. And by hearing it, *minbars* and *mihrabs* have become ornamented. Books and papers are graced by its marks. Because of its honor, the young have prevailed over the old. Faces and hearts have been illuminated by its brilliance. Souls and insights glow with its splendor. The radiance of the shining sun on the swirling stars is humiliated in its light. Its inner lighting belittles the gleam in pupils and eyes. And when sights become fatigued and the curtains and veils are thickened, a host of thoughts penetrate by its light the depths of the greatest obscurities. Blessings be upon Muhammad, His Messenger, whose origin is pure, whose glory broke through, whose eminence triumphed, the one of raining generosity who is raised as a giver of good tidings to the believers and an admonisher to the disbelievers, abolishing with his *Sharî'a* all ancient and elapsing religions, the one supported by the glorious Qur'ân, which bores neither its

listener nor transmitter. No poet nor writer can ever comprehensively fathom its abundant [wisdom]. Nor can a describer's description, or a relator's mention, exhaust its wonders. Every rhetorician falls short of tasting comprehension of its manifest secrets. And upon his family and Companions, lavish peace—uncountable within the lifetime of anyone.

PREFACE

Now to proceed. The judge of reason, the ruler which has been neither deposed nor changed, and the evidence of the *Sharî'a*,[1] which is credible and just, have spoken. This world is the abode of deceit, not the dwelling place of pleasure. It is the arena of action, not the bedstead of laziness. It is a station of transit, not a park of lasting amusement. It is only a trading post, not an abode of everlasting residence. It is a market place whose commodity is obedience [to Allâh], the profit of which consists of success on the Day of Reckoning.

Obedience is of two types: practice and knowledge. Knowledge is the most profitable and prosperous part of it, for it is

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[1] An excellent summary of the definition of this term is provided by Rahmân, *Islam*, p. 100:

> "This word originally means 'the path or the road leading to the water,' i.e. a way to the very source of life. The verb *shara'a* means literally 'to chalk out or mark out a clear road to water.' In its religious usage, from the earliest period, it has meant 'the highway of good life,' i.e. religious values, expressed functionally and in concrete terms to direct man's life."

For more information on the linguistic meaning of *Shar'* and *Sharî'a*, see b. Manzûr, *Lisân al-'Arab*, 8:175-179; Jurjânî, *Kitâb al-Ta'rîfât*, p. 132; Tahânawî, in *Kashshâf Istilahât al-Funûn*, 1:761, expanded on Jurjânî's definition.

also a kind of practice. But it is the act of the heart which is the most valuable of the faculties of the body. It is the endeavor of reason which is the noblest of things, for it is the vehicle of religion and the bearer of trust, the trust offered by Allâh to the Earth, the Mountains, and the Heavens. But they were afraid to bear it and resolutely refused.

Further, knowledge is of three kinds: One is the purely rational, which the *Sharî'a* neither incites nor invites to; such as, arithmetic, geometry, astronomy, and other such kinds of learning. This is situated between false uncertainties, which are unworthy—"indeed, some conjecture is sin"[2]—and that knowledge which is true but has no benefit. We seek refuge in Allâh from knowledge which has no benefit. Benefit does not reside in the satisfaction of worldly passions and luxurious blessings, for these are transitory and must pass. On the contrary, *benefit* is the reward of the Hereafter.

Another [kind] is the purely traditional sciences—like *ḫâdîth* [prophetic traditions], and *tafsîr* [the Qur'ân's commentary], which are not difficult matters. For each one, young and old, can know them sufficiently because all that is required in traditional knowledge is the power of memory, where there is no role for reason.

Yet the noblest knowledge is where Reason and Tradition are coupled, where rational opinion and the *Sharî'a* are in association. The sciences of jurisprudence [*fiqh*] and its principles [*uṣûl*] are of

[2]Qur'ân, 49:12.

this sort, for they take from the choicest part of the *Sharî'a* and Reason. They can be neither manipulated purely by Reason, such that the *Sharî'a* could not accept them, nor based upon blind following, where Reason could not attest to their sanctity or rectitude.

It is due to the nobility of the science of jurisprudence and its ascendancy that Allâh has provided ample motivation for people to seek it. Those who know it enjoy the highest station among the learned, are the greatest in honor, and have the largest following of helpers.

Be that as it may, the religious and worldly benefits, the rewards of the here and the Hereafter, that distinguish this science demanded in the prime of my youth that I devote to it quite a stretch from that respite /1:4/ of life and that I dedicate to it a measure from that breathing space in existence. Thus, I wrote many books concerned with the details of *fiqh* [Law] and its principles.

Subsequently, I devoted myself to the knowledge of the path of the Hereafter[3] and the hidden secrets of religion. I wrote

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[3]Ghazâlî refers here to his spiritual experience that culminated in ṣûfism, the period of isolation where he began writing the *Iḥyâ'* and developed the concept of knowledge of the path of *âkhira*, distinguishing it from the knowledge of *fiqh*. According to him, the latter, *Iḥyâ'*, 4 vols (Cairo: Dâr al-Ma'rifa), 1:21, adheres to the fulfillment of obligations that ensure harmony and preserves order in this life, while knowledge of the path of *âkhira* requires awareness of the necessary qualities of the heart, such as patience, truthfulness, sincerity, etc., and the forbidden qualitites of the heart, like arrogance, showing off, competing for the world, etc. For elaboration see *Iḥyâ'*,1:2 and 1:19-21.

extensive books in this field, such as *Revival of the Religious Sciences* ; concise ones, such as, *The Jewels of the Qur'an;* and [books] of moderate [length], such as, *The Alchemy of Happiness.*

But Allâh's determination, تعالى, impelled me to return to teaching and benefitting students, a group of whom, who had acquired the science of *fiqh*, propsed to me that I should write a book on *usûl al-fiqh*, where I proceed to meticulously combine compilation and investigation, taking a middle road between insufficiency and being boring, composing it in a manner that appeals to understanding—not as in *Tahdhîb al-Usûl* [*Refining the Principles*], for it is too exhausting and lengthy, but more than *al-Mankhûl* [*The Sifted from the Science of the Principles*], which tends to be too brief and concise. So I responded to their request, seeking Allâh's help, joining herein both organization and precision to facilitate comprehension of its meanings, for one cannot dispense with the other.

I have composed and brought to it an admirable, delicate organization. The reader can at once become aware of all the aims of this science and benefits from the incorporation of all the areas of thought within it. For every science where the student cannot get at its crucial points and foundations, at the outset, leaves him no chance of attaining its inner secrets and aspirations.

I have titled it, *al-Mustasfâ min 'Ilm al-Usûl* [*The Quintessence of the Science of the Principles*].

Yet it is Allâh, تعالى, who is asked to grace [me] with His

success and guide [me] to the straight path. He is indeed worthy of answering those who ask of Him.

EXORDIUM

Know that we have arranged and compiled in this book the science known as *uṣûl al-fiqh,* [the principles of jurisprudence] and structured it in the form of an introduction and four *Quṭbs* [poles], to which the introduction serves as an opening and preparation. However, the *Quṭbs* contain the essence of what is intended.

In this Exordium, I will mention the meaning of the principles of jurisprudence: **First**, its definition and essence; **second**, its rank and its relationship with reference to other sciences; **third**, how it stems into the introduction and the four *Quṭbs*; **fourth**, how all divisions of this science and its details are subsumed under the four *Quṭbs*; and **fifth**, the manner in which [*uṣûl al-fiqh*] is related to the introduction.

A STATEMENT ON THE DEFINITION OF *UṢŪL AL-FIQH*

Know that you cannot understand the meaning of *uṣûl al-fiqh* if you do not first define '*fiqh*' itself. '*Fiqh*,' in its original linguistic usage, means knowledge and understanding. One says, "So and so knows [*yafqahu*] good and evil." That is, such a person knows and understands them. But in the convention of the '*ulamâ*' [scholars], it has come to specifically express knowledge of the *Sharî'a* rules which have been established for [qualifying] the acts of the loci of obligation.

Therefore, the term *'faqîh'* cannot customarily be applied to a theologian [*mutakallim*],[4] a philosopher, a grammarian, a traditionist [*muḫaddith*], or a commentator on the Qur'ân [*mufassir*]. /1:5/ Rather, [*'faqîh'*] specifically denotes scholars of the *Sharî'a* rules which have been established to [qualify] human acts, such as obligation [*wujûb*], prohibition [*ḫaẕr*], indifference [*ibâḫa*], recommendation [*nadb*], or reprehension [*karâha*]; the status of contracts as valid, defective, or that which is void; and rites of worship with reference to their being *qaḏâ'* [belated performance of a religious act] or *adâ'* [timely performance]; and the like.

It should not be difficult for you to perceive that *acts* have certain rational characterizations—namely those that are comprehended by reason—such as their being accidents inherent in a certain locus and differing from substance, existing as beings in motion or at rest, and so on. One who is familiar with this is called a *mutakallim*, not a *faqîh*.

As for their [acts'] characterizations—insofar as they are obligatory, prohibited, allowed, reprehensible, or

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[4]*'Ilm al-kalâm'* is translated, according to L. Gardet, *Encyclopaedia of Islam*, "*'Ilm al-Kalâm*," as an "approximate rendering of *theology*." Whether or not this term truly reflects what *''Ilm al-kalâm'* signifies is a question raised by many. Yet *theology* has been widely used to describe *kalâm* among Islamicists, despite the diversity of its technical application in English. I have selected to use the English term interchangeably with the Arabic. It may be helpful to consult for the definition of *kalâm* L. Gardet's article, as well as R. J. McCarthy, *The Theology of Al-Ash'arî* (Beirut: n.p., 1953); and J. Windrow Sweetman, *Islâm and Christian Theology* (London; Redhill, 1945).

recommended—only a *faqîh* undertakes their explanation.

Once you comprehend this, then you should understand that *uṣûl al-fiqh* means the sources of these rules [*ahkâm*] and the knowledge of the ways that they indicate the rules as a whole, rather than from the point of view of details. For *'Ilm al-khilâf* [the science of differences in legal opinion],[5] which is part of *fiqh*, also includes the sources of rules and the ways that they indicate them; but it concerns details, such as the indication of a certain *ḥadîth* concerning specifically the case of a marriage without [the bride's] guardian, or the indication of a certain verse specifically in the case of not mentioning the name of Allâh [upon the slaughter of an animal].

As for the science of *uṣûl*, none of these questions of detail are discussed there, even by way of providing example. Rather, the subjects [of discussion] are devoted to the principles of the Book, the *Sunna*, and *Ijmâ'* [consensus]; the conditions of their rectitude and establishment; and the ways in which they indicate [rules], in general, either through their mood [*ṣîgha*], connotation [*mafhûm*], context, or the rational implications of the texts,—that is, *qiyâs* [analogical reasoning][6]—without discussing any particular question. In this, then, the science of the principles of jurisprudence differs from its details [i.e. *fiqh*].

Now, based on this you know that the sources of rules are the

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[5]Aḥmad Zakî Ḥammad, *al-Khilâf fî Ḍaw' al-Nuṣûṣ al-Shar'iyya*, (Bloomington: Râbiṭat al-Shabâb Muslim al-'Arabî, 1401/1981).

[6]See Ghazâlî's definition of *qiyâs*, *al-Mustaṣfâ*, 2:28.

Book, the *Sunna*, and *Ijmâ'*[7] Therefore, knowing the ways in which these three sources are established, the conditions of their rectitude, and the ways in which they indicate the rules is [the function of] the science that is expressly known as *uṣûl al-fiqh*.

A STATEMENT ON THE RANK OF THIS SCIENCE AND ITS RELATIONSHIP TO OTHER SCIENCES

Know that the sciences are divided into natural sciences, such as medicine, mathematics, and geometry—which for our purposes are not included here—and religious sciences, such as *kalâm*, *fiqh* and its principles; the sciences of *ḥadîth* and *tafsîr*; and the science of inner matters, by which I mean the science of the heart and its purification from vile conduct.[8] Each of the natural and religious sciences is further divided into universal and particular [sciences].

The universal science from among the religious disciplines is theology. But other sciences, such as jurisprudence, its principles, *ḥadîth*, and *tafsîr*, are particular sciences. For a *mufassir* concentrates only on the meaning of the Book specifically; a

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[7]It is worthy to note that Abû Ya'la al-Farrâ' (d. 458 H.), a Ḥanbalite legist, considered only these three sources and made reference to *istiṣḥâb al-ḥâl* [maintaining the primacy of nonobligation]. Also, al-Khaṭîb al-Baghdâdî (d. 463 H.), who like Ghazâlî is al-Shâfi'ite, limited the sources to three in his legal work *Kitâb al-Faqîh wa al-Mutafaqqih*, 2 vols. 2nd edition ed. Ismâ'îl al-Ansârî (Beirut: Dâr al-Kutub al-'Ilmiyya, 1980), 1:54, and stated that *qiyâs*, instead of being considered a source, is the activity of the one who applies it.

[8]Compare with Ghazâlî's division of sciences in his *Iḥyâ'*, 1:12-41.

muhaddith focuses only on the ways of establishing *hadîth* in particular; a *faqîh* looks exclusively at the rules pertaining to the acts of the loci of obligation; and the *usûlî* is attentive to only the principles of the *Sharî'a* rules in particular.

Now, the *mutakallim* is the one who inquires into the most general of things, namely existence. He first classifies existents into the eternal and the originated. He then divides the originated into *substance* and *accident.* /1:6/ And he divides accidents into those [attributes] which are dependent upon life, such as knowledge, will, power, speech, hearing, and seeing, and those which are needless [of life], such as color, odor, and flavor. He then divides substances into animal, plant, and inorganic matter and explains whether their differences are due to their speciation or due to accident.

Next, he focuses on the Eternal being, explaining that He can be neither multiple nor divisible, as are originated beings. Rather, He must be 'one,' distinguished from originated beings by certain attributes which are *necessarily* His, other characteristics which are *impossible* for Him, still other characteristics which are *possible* for Him but neither necessary nor impossible. He further distinguishes between what is possible, impossible, necessary or absurd concerning Him. Then he explains that the principle of acting is possible for Him and that the world is His possible act—and it is because of its possibility that it requires an originator. Also, sending messengers is among the possible acts on His part. He is capable of this and of demonstrating their truthfulness through miracles. Furthermore, this possibility has occurred.

Here, the discussion of the *mutakallim* ends, and the

influence of reason stops. Thus, reason can lead one to the truthfulness of the Prophet but then abdicates itself, acknowledging that it receives with acceptance from the Prophet what he says concerning Allâh, the Last Day, and other things that reason cannot independently comprehend, nor determine its impossibility. For the *Sharî'a* may come with that which reason falls short of knowing independently because reason does not independently know that obedience is a cause for bliss in the Hereafter and that disobedience is a cause for misery. Yet it cannot decide upon its impossibility either.

Furthermore, it necessarily concludes the truth of him [the Prophet] whose truthfulness has been demonstrated by miracle. So when the Prophet speaks on His behalf, reason attests to it in this way. This, then, is the content of the science of *kalâm*.

Now you have known from this that the inquiry of the theologian begins with the most general of subjects, namely existence. He then gradually descends into the details which we have mentioned, and there establishes the principles of the other religious sciences, such as the Book and the *Sunna*, as well as the truth of the Prophet.

Thus, a *mufassir* takes a particular subject from the totality of the *mutakallim's* inquiry, namely the Book, and looks into its commentary. Similarly, the *muhaddith* takes one particular [subject], the *Sunna*, and discusses the manners of its establishment. The *faqîh* takes one particular subject, the act of the locus of obligation, and then examines its relation to the *Sharî'a* address as far as obligatoriness, prohibition, and lawfulness [are

concerned]. The *us̱ûli* takes one particular aspect, and that is the statements of the Prophet—whose truthfulness has been demonstrated by the *mutakallim*—then inquires into the way in which it conveys the rules [*aẖkâm*], either through their explicit, implicit, or logical meanings and extractions. The inquiry of the jurist does not go beyond the utterances of the Messenger, عليه السلام, and his actions, for even the Book of Allah he hears only by his utterance. *Ijmâ'* too is established based on his utterances.

Now, the sources are only the Book, the *Sunna*, and *Ijmâ'*. The truthfulness and validity of the statements of the Prophet are established in the science of *kalâm*, which undertakes to establish the principles of all the religious sciences, which are therefore particular /1:7/ [sciences] relative to *kalâm*. Therefore, theology is the highest ranking science, for to arrive at these details one must start with it.

If it is said:[9] It should be conditional then for the *us̱ûli*, the *faqîh*, the *mufassir*, and the*muẖaddith* to have acquired the science of *kalâm*; for before finishing with the higher and universal [science], how could one descend to the lower and detailed [sciences]?

We shall say: This is not a condition for being an *us̱ûli*, a *faqîh*, a *mafassir*, or a *muẖaddith*, even though it is required for

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[9]Ghazâlî throught the book follows the prevailing dialectic style of argumentation in the writings of *kalâm and us̱ûl*, introducing the opponents views with the conditional clause *If it is said* answered by *We shall say*.

being an unrestricted scholar [*'âlim mutlaq*], mastering the religious sciences. This is because there is no science among the detailed sciences but that has certain primary premises which are accepted in this science without question. Yet the proof of their establishment is sought in another science.

Now, the *faqîh* focuses on correlating the act of the locus of obligation with the *Sharî'a* address, in relation to [the latter's] command or prohibition, but is not obligated to demonstrate the proof concerning the establishment of volitional acts for the loci of obligation. For the Predeterminists [*Jabriyya*] have denied man the [freedom to] act, while another group has denied the existence of accidents. Yet acts are accidents.

The *faqîh* is not required to demonstrate the proof for the establishment of the *Sharî'a* address, nor that Allâh, تعالى, has speech inherent in Him which is either command or prohibition. He accepts by way of *taqlîd* [blind imitation] the establishment of the address as being from Allâh, تعالى, and the establishment of [freedom to] act on the part of the locus of obligation. Furthermore, he focuses on relating acts to the address. Thus, he he has reached the utmost of his science. Similarly, the *usûlî* [jurist] accepts by *taqlîd* from the theologian that the statements of the Messenger are authoritative proof and evidence that are necessarily true. He then examines the manners of its indications and the conditions of its rectitude. Therefore, any scholar knowing a particular science necessarily accepts [without questioning] the primary premises of his science, until he ascends to the highest science. Thus, he would advance from his science to another.

A STATEMENT ON THE MANNER IN WHICH [*UṢŪL AL-FIQH*] REVOLVES ON FOUR *QUṬBS* [POLES]

Know that if you have understood that the jurist's focus is on the ways in which the authoritative proofs convey the *Sharî'a* rules, it should be obvious to you that the purpose is knowing the modes of extracting the rules from the sources. Therefore, it is necessary to examine the rules, then the sources and their classifications, and then the method of deducing these rules from the sources, as well as discussing the qualifications of the *muqtabis*, one who is able to extract the rules, for the rules are fruits. Each fruit has a quality and a substance in itself, and each has a source of fruition, a cultivator, and a method of cultivation. The fruit are the rules, by which I mean obligation, prohibition, recommendation, reprehension, and permission; good and bad; *qaḏâ'* [restitution] and *adâ'* [timely performance]; validity and invalidity; and so on.

As for the sources of fruition, they are only three: The Book, the *Sunna*, and *Ijmâ'*.

Now, the methods of utilizing [the sources] are the manners in which proofs yield their indications, and they are four. For statements either indicate an object by their case or syntax; by their denotative, connotative or entailed [meanings]; by what they require or necessitate; or by their rational implication and the sense derived from it.

The person who imparts the result is the *mujtahid* [one who practices independent reasoning or *ijtihâd*]. /1:8/ It is necessary to

know his qualifications, conditions, and powers.

Thus, the body of the principles of jurisprudence revolve around four *Quṯbs*:

The First *Quṯb* concerns the rules—and it is best to start with them, for they are the desired effect.

The Second *Quṯb* concerns the sources: The Book, the *Sunna*, and the *Ijmâ'*; and they come second, for after having known the fruit there is nothing more important than to know the source of fruition.

The Third *Quṯb* is concerned with the method of their utilization, namely the manners in which proofs yield their indications, which are four: Explicit textual indications; implicit indications; entailed and required indications; and rational implications.

The Fourth *Quṯb* concerns the *mustathmir*, that is, the *mujtahid*, who rules on the basis of his speculation. Corresponding to him, is the *muqallid* [follower], upon whom it is incumbent to follow [the *mujtahid*]. Therefore, it is necessary to discuss the conditions of the follower of the *mujtahid* and both their qualifications.

A STATEMENT ON THE MANNER IN WHICH A MULTIPLICITY OF USŪL AL FIQH BRANCHES ARE SUBSUMED UNDER THESE FOUR *QUṮBS*

You may say: *Uṣûl al-fiqh* contains many aspects and diverse parts; so how can all of them be subsumed under these four Poles?

We shall say: The First *Quṯb*, concerns *ḫukm* [a *Sharî'a* rule].

For a rule has an essence in itself, a divisibility, and a relationship to [1] the Ruler, that is, the Lawgiver; [2] to the ruled, which is the locus of obligation; [3] to the subject under judgment, that is, the acts of the locus of obligation; and [4] to that which manifests it [the rule], namely its reason [*sabab*] or its underlying cause [*'illa*].[10]

Now, in examining the essence of a 'rule' in itself, it becomes evident that it is the *Sharî'a* address. It is not a qualification of the act, nor is it a qualification of the goodness or evil of something; reason has no place in it, for there is no rule before the revelation of the *Sharî'a*.

In discussing categories of rules, [we] clarify the definitions of the obligatory, the prohibited, the recommended, the allowed and the reprehensible; *qaḏâ'* and *adâ'* ; validity and invalidity; resolution [*'azîma*] and concession [*rukhsa*]; as well as other categories of rules.

In discussing the Ruler, [we] demonstrate that there is no rule except for Allâh; and [in fact], the Messenger has no rule; nor a master over his subject; nor any creature over another. Certainly, all Rule belongs to Allâh, تعالى, and His imposition. None other than Him has Rule.

Inquiry into those upon whom rule is laid [*al-maḫkûm 'alayhîm*] clarifies addressing the forgetful [*al-nâsî*], the forced [*al-mukrah*], and the minor [*al-sabîy*]. It also [clarifies] addressing the unbeliever [*al-kâfir*] with the details of the *Sharî'a*, as well as the

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[10]The bracketed numbers in the text are added for the sake of clarity

intoxicated [*al-sakrân*], and those upon whom the laying of obligation is possible and impossible.

In discussing the subject of judgement [*al-maḫkûm fîhi*], it becomes clear that the address is related to acts and not to substance. Furthermore, it is not a description of acts in their essence.

In treating that which manifests the Rule, [we] clarify the essence of the reason, the underlying cause, the condition, the locus, and the sign [of indication].

Therefore, this *Quṯb* contains a number of miscellaneous portions from various sections of *uṣûl,* which jurists have introduced randomly in scattered places, that do not correlate and that are linked by nothing. Consequently, a student cannot locate their purposes, the significance of the need to know them, or the manner in which they are related to *uṣûl al-fiqh*.

The Second *Quṯb* concerns the source of fruition, that is, the Book, /1:9/ the *Sunna*, and *Ijmâ'*.

In discussing the basic nature of the Book, [we] clarify its definition, that which is part of it and that which is not, the manner in which the Book is established, that is exclusively through *tawâtur*, [11] and the explanation of what it is possible for the Book

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[11] '*Tawâtur* ' linguistically signifies consecutiveness or recurrence; following one another closely; ceaselessness. In the technical language of the Traditionists, it is applied to a report transmitted through many different channels unbroken from one generation to the next such that its forgery is considered impossible. For Ghazâlî's elaborate discussion on *tawâtur*, see his chapter on *Sunna* in *al-Mustaṣfâ*,1: 32-39.

to include as to literal and figurative [meanings] and Arabic and foreign [words].

In discussing the *Sunna*, what is made clear are the characteristics of the statements and acts of the Messenger and the ways they are established, either through *tawâtur* or solitary reports [*âhâd*], the manner of their transmission by way of a traced chain of reporters [*musnad*] or an unconnected chain [*mursal*], and the characteristics of their transmitters, such as trustworthiness [*'adâla*] and denial [of their reports], through the end of the Book of Traditions.

Also connected with the Book and the *Sunna* is the Book of *Naskh* [Abrogation], for abrogation applies only to them. As for *Ijmâ'*, abrogation does not apply to it.

In discussing the principle of *Ijmâ'* [we] clarify its essence, proof, and categories, in addition to the consensus of the Companions and the consensus of their Successors, treating all the questions of *Ijmâ'*.

The Third *Qutb* concerns the methods of extracting [the rules]. They are four:

The first concerns the indication of text by way of its mood. Connected with this are discussions on the imperative and prohibitive moods; and general, specific, apparent, interpretive, and explicit modes [of expression].

Furthermore, the discussion in the Book of Commands and Prohibitions and the Book of General and Particular [implications] is a discussion on the requirements of the linguistic moods. As for indication by way of signification or connotation, this is included in

the Book of Connotations [*Kitâb al-Mafhûm*] and the Book of Indicative Address [*Dalîl al-Khiṯâb*].[12]

As for the necessary and required indications of the Text, it includes the sum of meanings to which the words point. For example, a person says to another person, "Emancipate your slave on my behalf." So it is said, "I have emancipated him." Now, as a necessary part of this statement, it contains the meaning that the mastery of this slave has been acquired by the seeker. But neither party has spoken [explicitly] about possession. But it necessarily follows from what they have actually said. Thus, it is its necessary requirement.

As for indication from the perspective by way of the deduced meaning of the Text, it is like his saying, صلى الله عليه وسلم, "A judge must not rule when he is angry." For it implies also the hungry, the sick, or one who is urine congested—and from this [discussion] arises *qiyâs* [analogical reasoning], leading us to explain all the rules of *qiyâs* and its divisions.

The Fourth *Quṯb* concerns the *mustathmir*, namely the *mujtahid*, corresponding to the *muqallid*. In it [we] clarify the characteristics of a *mujtahid*, those of a *muqallid*, and the domain

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[12]*Dalîl al-Khiṯâb*, otherwise referred to as *Mafhûm Mukhâlifa*, implies strict adherence to the meaning of a text in the application of the *Sharî'a* rules only in that which is specified in the text, while different, often contrary, rules apply to things not covered in the meaning of the text. For a detailed account, see an excellent treatment by Muḫammad Adîb Ṣâliḫ, *Tafsîr al-Nuṣûṣ fî al-Fiqh al-Islâmî*, 2 vols. (Beirut: al-Maktab al-Islâmî, n.d.), 2:665-756. Also, see Ibn Khalaf al-Bâjî(d. 474 H.), *Kitâb al-Ḫudûd fî al-Uṣûl*, ed. Nazih Jammad (Beirut: Mu'assasa al-Za'bi, 1973), p. 50.

where *ijtihâd* applies, to the exclusion of that wherein *ijtihâd* has no place. [This is followed by] a statement concerning the validation of the *mujtahids'* [judgments] and the totality of the rules for *ijtihâd*.

This is a summary of what is studied in the science of *uṣûl*. Thus, you have now known the manner of its issuing forth from the four *quṭbs*.

A STATEMENT ON THE INTRODUCTION AND THE MANNER IN WHICH *UṢŪL* IS RELATED TO IT

Know that since the definition of *uṣûl al-fiqh* is traceable to knowledge of the rules' sources, it contains three terms: *Ma'rifa* [knowledge], *dalîl* [proof] and *ḥukm* [rule(s)]. Thus, it has been said that if it is necessary to acquire knowledge of the rules to the extent that knowing it is one of the four *quṭbs*, it is also necessary to be acquainted with the proofs and *ma'rifa*, that is, knowledge.

Furthermore, the desired knowledge cannot be attained except through discursive thought. Therefore, it is incumbent to know discursive thinking [*naẓar*]. Therefore, they [scholars] proceeded in explaining the definitions of *'ilm*, *dalîl*, and *naẓar*. They did not stop at introducing the forms of these things. Rather, they were led to furnish proof in order to establish knowledge against those who deny it from among /1:10/ the Sophists,[13]

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[13]The Sophists deny the existence of knowledge. Jurjânî, *Kitâb al-Ta'rîfât*, p. 134; and *The Encyclopedia of Philosophy*, "Sophists," s.v. by G. B. Kerferd.

furnishing the proof against those who deny discursive thought. Furthermore, they were [led to treat] various divisions of sciences and proofs.

But this is exceeding the limits of this science and mixing it with theology. The theologians from among the *uṣûlîs* have elaborated [excessively] in this regard, mainly because theology overwhelmed their natures. The love of their profession compelled them to mix it with this art, just as the love of the language and [its] grammar forced some jurists to mix parts of grammar with *uṣûl*. Thus, they mention about the meanings of prepositions and inflections certain things which specially pertain to the science of grammar, just as the love for *fiqh* has led a group of legists from Transoxania, namely Abû Zayd [al-Dabbûsî], رَحِمَهُ الله,[14] and his followers, to mix many questions about the details of *fiqh* with its principles. Although they brought this by way of examples to illustrate how a principle leads to certain detailed legal points, they did so in excess.

The *mutakallims'* justification for stating the definitions of *knowledge*, *discursive thought*, and *proof* in the science of *uṣûl al-fiqh* is more acceptable than their justification for constructing demonstrative evidence to establish them. For definition affirms in the mind the forms of these things; at the least, one conceptualizes them, when the discourse relates to them, just as one cannot be

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[14] See my library paper, "Abû Zayd al-Dabbûsî," for the Near Eastern Languages and Civilizations Department, University of Chicago, supervised by Fazlur Rahman.

content with less than the conceptualization of *Ijmâ'* and *qiyâs* on the part of those who study *fiqh*. But knowing the authority of *Ijmâ'* and *qiyâs* is particular to *uṣûl al-fiqh*.

But bringing the argument for knowledge and discursive thought against those denying them is to drag theological discussion into *uṣûl*, just as a discussion of the authority of *Ijmâ'*, *qiyâs* and solitary report in *fiqh* is to bring the *uṣûl* [principles] into their details.

However, after we have made you aware of their excessiveness in this mixing, we still do not think that this book should be completely devoid of things of this sort, for weaning one from what he is accustomed to is difficult and human minds shun the novel. But we shall be content, with regard to this matter, with things whose benefit is obvious to all sciences in general—such as defining intellectual cognition and how it gradually descends from self-evident truths to speculative thoughts—in a way that clarifies the essence of knowledge, discursive thought, proof, and their divisions and arguments, in a profound exposition not to be found even in the texts of *kalâm*.[15]

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[15]Ghazâli, however, states explicitly in the beginning of this Introduction which he speaks of that it is neither part of the science of *uṣûl*, nor is it a specifically required introduction to it. Rather, in his view, it is an introduction to all sciences. He goes on to say, "Whosoever desires not to transcribe this introduction should begin in the book [*al-Mustaṣfa*] with the First *Qutb* because this is the beginning of *uṣûl al-fiqh*." *Al-Mustaṣfa*, 1:10. In view of this, Fazlur Rahman agreed to confine the translation to the parts of the book more germane to the subject of *uṣûl*, namely the Preface, the Exordium, and the first two *Qutbs*, constituting the more important part of the Rules and their sources in *al-Mustaṣfâ*.

IN THE NAME OF ALLAH, THE MERCIFUL, THE COMPASSIONATE

THE FIRST *QUTB*
THE FRUITS: THE RULES

THE DISCOURSE ON [RULES] IS DIVISIBLE INTO FOUR ASPECTS: THE ESSENCE OF RULES; ITS DIVISIONS; ITS ESSENTIAL CONSTITUENTS; AND THAT WHICH MANIFESTS IT

THE FIRST ASPECT

THE ESSENCE OF RULES

This is comprised of an introduction and three discussions.

As for the introduction, it concerns the rule [*al-hukm*], which, in our view, is an expression for the address of the *Shâri'* [Lawgiver] in relation to the actions of the loci of obligation. Thus, the prohibited [*harâm*] is as saying, "Abandon this and do not do it"; the obligatory [*wâjib*] is as saying, "Do it and do not abandon it"; the allowable [*mubâh*] is as saying, "If you will, do it. If you will, leave it." But if this address is not from the Lawgiver, then there is no rule. For this we say that reason can neither pronounce goodness nor pronounce badness, nor necessitate gratitude to the Bestower. Thus there were no rules for acts prior to the arrival of the *Sharî'a*. Now, let us describe each one of the questions independently.

I. DISCUSSION: The Mu'tazilites hold that /1:56/ acts are divisible into good or bad. Some of these can be known by self-evident reason, like the goodness of saving the drowning or those who are perishing, being grateful to the Bestower, knowing the goodness of truth and the evil of ingratitude, hurting the innocent, and telling a purposeless lie. Some [acts] can be known by discursive reason, like the goodness of truth, even if it has harm,

and the evil of lying, even if it has benefit. Some can be known through revealed authority, like the goodness of prayer, pilgrimage, and the rest of the rites of worship. Also, they [the Mu'tazilites] claim that these [acts of worship] are distinguished from others by the characteristics of their essences, for they contain Grace, which can prevent obscenity and call for piety.

But reason alone cannot recognize them. So, we say that when one says, "This is good," or, "This is bad," its meaning is not conceivable without understanding the meaning of 'goodness' and 'badness,' for the technical usage of the terms *good* and *bad* vary. Therefore, a summary [of their usage] is necessary.

Now, there are three technical usages of [*good* and *bad*]:

The **first** is the popular usage that renders acts divisible into those that agree with the objective of the doer, those that thwart it, and those that neither agree with nor thwart it. So, the agreeing [sort] are called *good*, the thwarting [kind] are called *bad*, and the third [type] are termed *frivolous*. Based on this technical usage, if an act is agreeable to a person and disagreeable to another, then it is 'good' with respect to whom it is agreeable and 'bad' with respect to whom it thwarts. The killing of a great king would be considered good with respect to his opponents and bad with respect to his friends.

These common folk have no qualms about describing the acts of Allâh, تعالى, as bad if they disagree with their objective. Therefore, they curse time and the heavens, saying, "Accursed be the heavens and perish time!" while they know that the heavens are only subject [to Allâh's power]. They do nothing alone. Thus,

[the Prophet], صلى الله تعالى عليه وسلم, has said, "Do not curse time because Allâh is time." Therefore, the application of the terms *good* and *bad* to acts, as far as they are concerned, is akin to their application [of these terms] to physical forms. So when one's nature becomes inclined towards a [certain] physical appearance or the voice of a certain person, he pronounces it to be 'good.' But when one's nature becomes disinclined to a certain person, he pronounces him to be 'bad.' Yet there may be a person to whom some are disinclined and others inclined. So, he is good with respect to the latter and bad with respect to the former, such that the color brown is pronounced by some people to be good and by others to be bad. So, to these people, 'goodness' and 'badness' are used in accordance with agreement or disagreement [to their tastes]. Thus, these are relative concepts and are not like [the colors] black and white, for it is inconceivable that one thing be black from the perspective of Zayd and white from the perspective of 'Amr.

The **second** technical usage of *goodness* is in expressing that which the *Sharî'a* [has declared] as good through praising its doer. So, the act of Allâh, تعالى, is good in all circumstances, whether it agrees or disagrees with [one's] objective. Therefore, whatever is commanded in the *Sharî'a*, whether recommended or obligatory, is good. But that which is allowable is not good.

The **third** technical usage is that all which one 'may' do is [considered] good. Therefore, the allowable together with the commanded [acts] are good. The act of Allâh, then, is good in all circumstances.

Now, these three meanings are relative characteristics, /1:57/ and are intelligible. Thus, there is no restriction on anyone who uses the term *goodness* to express any of them. There is no quarrel about these terms. This being the case, the *Sharî' a* has not come forth distinguishing one act from another except on the basis of agreement and disagreement. But this differs with respect to an [act's contextual] relations. Therefore, it is not a character of its essence.

If it is said: We do not dispute with you in the case of these relative matters, nor with regard to the technical usages which you have agreed to accept. But we claim that goodness and badness are essential features of what is good and bad, and are known necessarily through reason in certain things like injustice, lying, ungratefulness, and ignorance. Therefore, we do not permit any of these to be [attributed] to Allâh, تعالى, on account of their badness per se, and prohibit them for all rational beings even before the arrival of the *Sharî'a* because this is bad per se. Now, how can this be denied if all the rational beings are in agreement [that these things are bad] without relating them to one circumstance to the exclusion of another?

We shall say: In what you have mentioned, you are disputed in three of these matters. The first of them concerns 'badness' as being an essential characteristic. The second questions your statement that this ['badness'] is necessarily known to rational beings. And the third concerns your assertion that if rational

beings agree [on 'badness'] this would be decisive proof and an argument that these things are necessarily so.

As for the first, claiming ['badness'] as being an essential characteristic, this is dogmatic assertion of the unintelligible. For, according to them [the Mu'tazilites], killing is bad per se, provided that it is not preceded by a crime nor followed by compensation, such that it is permissible to inflict pain on animals and to slaughter them; and this is not regarded as bad on the part of Allâh, تعالى, for He will requite them in the afterlife. But killing per se has one essence that does not differ whether it is preceded by a crime or followed by pleasure, except in terms of its relationship with the benefits and purposes. Furthermore, [regarding] lying, how can it be bad per se even while there [may] be protection for a prophet's life by concealing his whereabouts from a transgressor aiming to kill him? In that case [lying] is good—rather, obligatory—and its abandonment would be sinful. Now, as for an essential characteristic, how can it be changed by relating it to circumstances?

As for the **second** [matter] that [good and bad] may be necessarily known, how can you conceive of this while we are disputing it with you, whereas necessary [knowledge] is something wherein many rational beings do not dispute? Also, your saying that you are [naturally] compelled to know, and you agreed upon it, you think, however, that your knowledge is based on revealed

authority, just as al-Ka'bî[1] thought that the basis of his knowledge of *mutawâtir* reports was discursive reasoning.

It is not impossible to confuse the source of knowledge. But, what is impossible is to dispute knowledge itself—and there is no disputation in this. For we say that this is a corrupt argument because inflicting pain on animals is considered good [when it comes] from Allâh, تعالى, nor do we believe that they have crimes or will be requited. This proves that we are disputing knowledge itself with you.

As for the third [matter], even if we concede to the agreement of rational beings, this still would not contain proof because it is not agreed that they are compelled to [know] this [by the necessity of reason]. Rather, it is possible that they fell into agreement among themselves upon that which is not necessarily [self-evident], but yet agreed to such. For people agreed in the established [proof] that there is a Maker and the permissibility of Him sending messengers, and no one has differed with this except for outcasts. Even if it so happened that these outcasts supported them, it still would not be necessarily [self-evident]. Similarly, the agreement of the people on this belief could be based in part on the proof of revealed authority indicating the badness of these things,

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[1]Al-Ka'bî, Abû al-Qâsim 'Abd Allah b. Ahmad b. Mahmûd (d. 319/931) is an important figure among the Mu'taziltes, who wrote many works on theology and founded the Mu'tazilite Ka'bî school. Information is found in Baghdâdî, *Târîkh Baghdad*, 9:384; Shams al-Dîn Ahmad b. Muhammad Ibn Khallikân, *Wafayât al-A'yân wa Anbâ' Abnâ' al-Zamân*, 8 vols. ed. I. 'Abbâs (Beirut: Dâr al-Thaqâfa, n.d.), 1:252; and b. Hajar, *Lisân al-Mizân*, 3:255.

on *taqlîd* [blind acceptance] in the understanding of /1:58/ those who rely on the revealed authority, and [partly] on the confusion which has occurred to the people of misguidance.

The incidental blending of these factors does not prove them to be necessarily [self-evident]. Therefore, there is no evidence for it being a decisive proof. If not for revealed authority forbidding the permissibility of this, this *ummah*, in particular, would be enough to [agree] on error. For it is not unlikely for [the *ummah*] to together agree on error based on *taqlîd* and confusion. Why should this not be so, while there are heretics who do not agree on the badness of these things, nor that their opposites are good? Therefore, how can one espouse that rational people have agreed?

They argue: We know with certainty that if truth and falsehood are set before a person, he will choose truth and be inclined to it—i.e., if he is rational. And this cannot be so except for reason of its goodness. Even a great king, sovereign over many territories, when seeing someone weak and near death would be inclined to save him, even if the king does not believe in the principles of religion, nor expect requital or gratitude [from him] or his objectives favored, as well. In fact, he may be troubled by it. Indeed, rational people have argued for the goodness of patience, even when affronted by the sword to utter a declaration of unbelief or reveal a secret or break a promise, while this is contrary to the objective of the [one being] compelled. In general, regarding moral qualities as good and giving generously are things

that no rational being can deny except through deliberate obstinacy.

Our reply is that we do not deny the popularity of these propositions among people and regard them as commonly praiseworthy. But their basis is either religion, following the *Sharî'a*, or personal objectives. Rather, we only deny this with respect to Allâh, تعالى. For He does not have *personal* objectives.

As for the application of these [terms] by the common people in that which is popular among them, it is always on the basis of their objectives. But sometimes their objectives are concealed and are too subtle to realize except by those who thoroughly investigate. We shall indicate the genesis of this confusion. There are three roots to their confusion through which delusive imagination enters.

The first [confusion] is that man applies the term *bad* to whatever thwarts his objectives, even though it is in agreement with another's objectives, because he does not turn his attention to others. For every personality is infatuated with itself and has contempt for others. Therefore, he determines what is bad in general, or he may relate evil to the essence of a thing and say that it is bad per se. Thus, he would be deciding on three things, one of which he is correct about—namely, the root of regarding it as bad—while he is wrong about the other two.

The first of them is relating evil to the essence [of a thing] because he did not recognize that it became evil because it thwarts his objectives. The second is that his generalization in determining what is bad stems from not taking others into consideration.

Indeed, [he] does not take into consideration some of his own circumstances, for he may in certain circumstances regard as good exactly what he considers bad when [his] objectives change.

The second [point of] confusion is that which thwarts the objective in all circumstances, except in one rare case. The imagination may not heed this rare case; in fact, it may not even occur to the mind. So, he sees it as opposing [him] in all circumstances, thus he determines it to be absolutely evil because of the circumstances of its badness preponderating in his heart and the elimination of the rare case from his remembrance, such as his judgment on lying as being absolutely evil and his heedlessness about the sort of lying that gains safeguarding the blood of a prophet or a *walî*.[1]

Now, if he has determined [something] an absolute evil, adhered to it for a time—and this is repeated in his /1:59/ ear and by his tongue—then repugnant aversion would be implanted in his mind. Furthermore, when this rare case occurs, he finds in himself aversion for it because of being raised to dislike it. For it has been dictated to him, by way of discipline and instruction, that lying is evil, and that no one must approach it. Moreover, its good in

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[1] *Walî* refers to the supporter, loving friend, ally, etc., of Allâh, one who is chosen for his preeminent holiness and extraordinary piety and virtue. For the linguistic and technical meaning of *walî*, see B. Manzur, *Lisân al-'Arab*, 15:406-415, Muṣṭafâ, *Mu'jam al-Wasîṭ*, 2:1070; and *The Shorter Encyclopedia of Islam*, 1953 ed., s.v. "Walî."

certain circumstances was never shown for the fear that his aversion from lying would not be reinforced, and thus he might commit it. In addition, lying in most circumstances *is* evil. Also, hearing at a young age is like engraving on a stone—so it is engrained in one's mind. Thus, he yearns to absolutely assent to it. It is true not in all but in most circumstances. And since in his memory there is no more than the majority of circumstances, it is, as far as he is concerned, all of the circumstances. Hence, he believes it absolutely.

The Third confusion's cause is the imagination's haste to [conclude] the opposite. Therefore, what is seen as associated with a thing, it is presumed that this thing is also inevitably associated with it [its counterpart] absolutely. But he does not understand that the more particular is always associated with the more general; but the more general does not necessarily have to be associated with the more particular.

An example of this is the aversion of a bitten person—that is, one bitten by a snake—toward a multi-colored rope, for he found harm associated with this image. Thus, he is deluded that this image is associated with harm. Similarly, the mind is averse to honey if it looks like dung because it found harm and filthiness associated with a moist, yellow substance. Thus, he imagined that filthiness is associated with yellowish, moist [objects]. The illusion overwhelms him to the extent that eating it [the honey] becomes impossible, even though reason rules against the imagination's deceit.

However, the faculties of the soul have been created compliant with [such] imaginations, though they may be false. Indeed, even [one's] nature truly shuns a beautiful women named with a Jewish name since it finds this name associated with evil. Hence, it presumes that evil also necessarily belongs to the name. Thus, when an important, rational question comes to one of the masses, he accepts it. But if you tell him that this is the Ash'arite, Hanbalite, or the Mu'tazilite view, he hastens to reject it, if he holds a bad opinion of those to whom it is related. This is not characteristic of the masses exclusively; rather, this characterizes most of the discerning identified with knowledge as well, except the learned firmly rooted in knowledge to whom Allâh has shown the truth as truth and has strengthened them to pursue it.

The faculties of the soul of most creatures comply with false imaginations, despite their knowing their fallacy. Most creatures' boldness or reserve are because of these imaginations. So, truly the imagination has great hold over the mind. Thus, man's nature shuns passing the night in a house where [lies] a corpse, despite his certainty that it cannot move. However, he imagines at each moment its movement and speech.

If you have comprehended these causes, then we shall resume and say that, indeed, rescuing [one in distress] preponderates over negligence on the part of one who does not believe in [prescribed laws of] religion out of the need to repell the harm which afflicts humans out of natural sympathy. And it is such a nature from which it is impossible to disengage. The reason for this is that man depicts himself in this calamity. And he depicts

someone else turning away from him and his rescue. Therefore, he finds this repugnant of him [the "someone else"] for conflicting with his objectives. So he returns to himself, supposing this repugnance from the person in the throws of death toward him. /1:160/ Thus, he repels that assumed repugnance from himself. But, this is unlikely to be conceived if it is supposed by an animal or a person who has no kindness.

And even if it is conceived, there remains another consideration, namely seeking praise for his good deed. So, if it is supposed that it would not be known that he is the rescuer, still he anticipates that it will become known. Therefore, this anticipation becomes an incentive. Even if it is supposed in a situation where it is impossible to become known, the inclination of the soul and preponderance [of the imagination] remains, resembling the aversion of a bitten person's soul to a multi-colored rope. This is because he saw this image [of being a rescuer] associated with praise. Thus, he presumed that praise is associated with it in every circumstance, just as when he saw harm associated with the image of the rope and his nature averts from harm. So he averted from what is associated with harm. For that which is associated with pleasure is pleasurable, and that which is associated with hate is hateful.

Indeed, if a man used to sit in a place with someone he adored and returns to it, within himself he senses a difference between this place and others. For this reason the poet said:

> I pass by the dwellings, the dwellings of Layla
> I Kiss this wall and that wall

For it is not these dwellings that obsess my heart
But the love of one who lived in them

And b. Rûmî said, explaining the reason for loving homelands:

What endears men's homelands to them,
desires youth fulfilled there
When they remember their homelands
it reminds them of times of their boyhood therein
So they yearn for this

Evidence to support this is abundant. This is the nature of imagination.[1]

As for persevering under the sword with peace of mind in regard to resisting the statement of disbelief, this would not be acclaimed by all sane people if it were not for the *Sharî'a*. In fact, they may disclaim it. Rather, it is acclaimed only by those who anticipate reward for perseverance or those who anticipate praise for it because of bravery or steadfastness in religion. Furthermore, there is often a courageous person who undertakes danger, attacking a number greater than him while he knows that he cannot stand [against] them. Yet he regards the harm that reaches him as insignificant because of the compensatory feeling of imagining praise and commendations, even if it comes after his

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[1] *Avecena's Psychology* has a lengthy discussion on *wahm*, where he defines *wahm* as perceiving particular meanings in a perceptible object, for perceptible objects are perceived by senses but there is a faculty which perceives inner meanings, which are not given by outer sense perception. It is particular because it is not universal. For if it were so it would be perceived by the intellect, not by *wahm*. Ibn Sîna was apparently the first to use it of the philosophy. However, the traditionists used the term to express mistake on the part of a reporter transmitting a *ḥadîth*.

death.

Similarly, as for concealing secrets and keeping trusts, people have counselled one another with them only for the benefits therein and have praised them greatly. So whoever bears harm on account of them does it only for praise. And even if it is supposed where there is no praise, it still exists in association with praise. Thus, the imagination's inclination remains to what is associated with pleasure, even though it is void of it. Now, if we suppose a person who is not subject to this illusion and does not anticipate reward or praise, then this is regarded as bad because he endeavors to destroy himself without benefit. Whoever does this is certainly considered a fool. Who would concede that such a person would prefer death over life? So on these grounds /1:61/ the answer proceeds concerning lying and all that they have supposed.

Furthermore, we say that we do not deny that some people customarily disclaim others committing injustice and lying. But this discourse is only about good and bad with regard to Allâh, تعالى. Whoever determines this, his basis is analogy between the unseen and the manifest. But how could an analogy be made while if, [for example], a master leaves his slaves and slavegirls, some would dash to others, committing obscenities while he observes them and is able to prevent them. This would be considered bad on his part. Yet, Allâh, تعالى, has done this concerning His servants; and this is not considered bad on His part.

Therefore, their statement that He has left them, thus they are restraining themselves and therefore deserve reward is foolishness; for He knew that they would not restrain themselves.

Consequently, He should have prevented them by force. How many people are prevented from obscenities because of impotency or disability? And this is better than enabling them, knowing that they would not restrain themselves.

II. DISCUSSION: Gratitude to the Benefactor is not obligatory by reason, contrary to the Mu'tazilites.

The proof for this is that there is no meaning for obligation except in what Allâh, تعالى, has obliged, commanded, and threatened punishment for its abandonment. So if the divine address did not come, then what meaning would obligation have? Furthermore, to confirm this position, reason only makes it obligatory either with a benefit or without a benefit. But it is impossible to oblige without benefit, for this is nonsense and foolishness. Yet if it was for a benefit, this would be either for the worshipped One—which is absurd, since He is exalted and free from wants—or for the worshipper, either in this world or in the Hereafter. But there is no benefit for him in this world. In fact, he exerts himself by thinking, speculating, and being grateful to Allâh and, because of this, is deprived of desires and pleasures. Moreover, there is no benefit for him in the Hereafter because reward is grace from Allâh confirmed by His promise and His message. So, if he was not informed about them, from where then would a person know he will be rewarded for this.

If it is said: It occurs to him that if he were to disbelieve and deny [faith], he may be punished, and that reason invites to follow the way of safety?

We shall say: No. Rather, reason knows the way of safety, then human nature impels to follow that path since every person is naturally disposed to love himself and hate pain. So you have made a mistake in saying that reason is a cause. Rather, it is a guide, while the incentives and motives that emanate from human nature follow the command of reason. You are also mistaken in saying that he is rewarded for gratitude and knowledge in particular; for this notion is based on imagining a want out of gratitude that distinguishes it from unbelief, while they are equal with regard to the greatness of Allâh, تعالى.

Indeed, if the door of illusions is opened, then it may occur to him that Allâh may punish him even if he is grateful to Him. So he reflects on this because He has provided him with means of obtaining blessings. Perhaps He has created him to live comfortably and pleasantly. Thus, his exerting himself to be grateful may be manipulation in His kingdom without His permission.

They [Mu'tazilites] have two obscure arguments:

The first of them is their saying that the unanimity of rational beings on the good of gratitude and bad of ingratitude has no way of being denied. This we concede, but [only] with regard to them because they are excited and comforted with gratitude and are grieved by ingratitude. But with respect to the Lord, تعالى, both

are equal. So, [for example], obedience and disobedience are equal with respect to Him.

This is supported in two ways. One of them is that a person seeking nearness to /1:62/ the Sultan by means of moving his finger tip in a corner of his home or in his room is, in fact, demeaning himself. Yet the people's worship in relation to the greatness of Allâh is even less in degree than this.

The second is that of a starving person to whom the king gives a crumb of bread for charity who goes about in the land shouting in public his gratitude [to the king]. This would be, in relation to the king, bad and disgraceful. But all the blessings of Allâh, تعالى, upon his servants, with respect to His capabilities, is even less than that [crumb] in relation to the king's treasures, for the king's treasures come to an end by giving similar crumbs because it is finite. But the capabilities of Allâh, تعالى, never end, even by giving multiples of what He has plentifully bestowed upon His servants.

The **second** obscurity is their statement that confining the sources of obligation to the *Sharî'a* would result in silencing the messengers' [arguments]. For when they present miracles, those whom they invite say, "We are not obliged to consider your miracles except on the basis of the *Sharî'a*. And the *Sharî'a* is not established by our consideration of your miracles. So establish for us the necessity of considering [the miracles] in order for us to consider [them]. But we cannot do this as long as we do not think."

Thus, this leads to a vicious circle. This can be answered in two ways:

One of them, precisely speaking, is that you are mistaken with regard to us in assuming that we say that the establishment of the *Sharî'a* is dependent upon the reasoning of those who speculate. Rather, if a messenger is sent and supported by his miracle in such a manner that the possibility of knowing were to accrue by it when a sane person examines it, then the *Sharî'a* is established and the revelation of the divine address is fixed, obliging thinking.

For there is no meaning for the *obligatory* except that its *doing* preponderates over its *neglecting* by repelling a known or imagined harm. Thus, the meaning of the obligatory, then, is the preponderance of doing over neglecting. The necessitating [factor] is the preponderator—and Allâh, تعالى, is the Preponderator. He is the one who informed his messenger—and commanded him to inform people—that disbelief is fatal poison, that disobedience is disease, and that obedience is cure. So the preponderator, then, is Allâh, تعالى, and the messenger is the reporter.

Now, the miracle is a cause that enables a rational person to arrive at an understanding of preponderance, while reason is an instrument with which one recognizes the truthfulness of the reporter [indicating] preponderance. Human nature, disposed to feel pain through torture and pleasure through reward, is the provoking incentive to be on guard from harm. After the coming of the divine address, obligation, which is the preponderance, occurs. So, with support through a miracle, there occurs the possibility of truth for a rational, reflective person, since he is able through it to know the preponderance.

But if he says, "I will not think until I know, and I cannot know until I think," it is as if a father says to his son, "Look out! For there is behind you an attacking lion; here it is, poised to assault you if you ignore him."

But he replies, "I will not turn as long as I do not know of the necessity of turning. And turning is not necessary as long as I do not know of the lion. And I do not know of the lion as long as I do not turn."

So, he tells him [his son], "Certainly you will perish for neglecting to turn. But you are not excused because you are able to turn and abandon your obstinacy."

So similarly, the Prophet says, "Death is [right] behind you. Then beyond death are tortuous *hawâmm*[1] and painful punishment if you abandon faith and obedience—and you know this with the slightest thought on my miracle. So if you think and obey, you will be saved. But if you are heedless and indifferent, then Allâh, تعالى, is needless of you and your actions. You will be harming only yourself." /1:63/ This is an intelligible matter without contradiction

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[1]*Hawâmm*, pl. of *hama*, are insect-like creatures, often of the flying variety, apparently nocturnal, which frequent grave yards, eating corpses. They are mentioned in *hadith*. See al-Zabîdî, *Tâj al-'Arûs*, 9:112. It appears, however, that at least in part these creatures' identity has been embellished by an Arab, pre-Islamic legend, wherein they have been likened to desert owls invested with the souls of dead men. Ibn al-Athîr cites a tradition that negated this legend. See 'Izz al-Dîn Ibn Athîr, *al-Nihâya fî Gharîb al-Hadîth wa al-Athar*, 5 vols. ed. M. Tanâhî (Riyad: Maktabat Islâmî, n.d.), 5:283.

in it.

The second reply concerns an encounter with their [the Mu'tazilite's] view, since they have determined that reason is the necessitating [factor]. But it does not by its essence mandate a necessary obligation from which no one can be released. For if it were so, no rational person's reason would be devoid of knowing the obligation. Yet there must be contemplation and thought. If he does not think, he will not know the necessity of thinking. If he does not know the necessity of thinking, then he will not think. This also leads to a vicious circle, as has been indicated before.

If it is said: A sane person is not without two notions that occur to him: one of which is that when he thinks and is thankful, he will be rewarded; and secondly, if he abandons thinking, he will be punished. Thus, soon apparent to him is the necessity of following the safe path.

We shall say: To how many rational persons, in which their lifetimes have passed, have these notions never occurred? Rather, it may occur to someone in which, with respect to Allâh, تعالى, one [notion] is indistinguishable from the other. So, why would I punish myself without any benefit returning to me or to the Worshipped?

Moreover, if not being without these two notions is sufficient to make knowing possible, then when a prophet is sent and propagates and demonstrates a miracle, the presence of these notions is probable. In fact, one cannot rid himself from this thought after the prophet's admonition and his warning. Nor do we

deny that people, when filled with fear, are by nature impelled to prudence. So, awareness is obtained only through contemplation emanating from reason. Thus, if one calls the manifester of obligation *the cause*, then he is being figurative in his wording. Indeed, the truth, in which there is no figurative expression, is that Allâh is the cause; that is, [He] preponderates *doing* over *neglecting*, whereas the prophet is the reporter, reason is the indicator, human nature incites, and the miracle facilitates knowing. And Allâh, تعالى, knows best.

III. DISCUSSION: A group among the Mu'tazilites hold that acts before the arrival of the *Sharî'a* were [considered] permissible. But some have said that [they] were prohibited. Still others have said that [they] were in suspension. Perhaps [what] they meant by this is that upon which reason did not rule with regard to its being good or bad on the basis of necessity or speculation—as we have clarified their opinions.

All of these positions, [however], are false.

As for the refutation of the position regarding [acts as] permissible, we shall say that what is permissible presupposes a permitter, as knowledge and remembrance presuppose a knower and recaller. But Allâh, تعالى, is the permitter whenever, through His address, He gives a choice between doing and not doing. So when there is no address, there is no choice; and, therefore, nothing is permissible.

But if they meant by being permissible that there is no harm in doing or in not doing, then they are correct with regard to the

meaning, but wrong concerning the expression. For the action of an animal, a minor, or an insane person cannot be qualified as being permissible, even though there is no harm in their doing or not doing.

Acts, with respect to Allâh, تعالى, namely what emanates from Allâh, are not described as being permissible, though there is nothing restraining Him from abandoning them. But when choice is removed, then permissibility is removed. So, if someone dares to apply the term *permissible* upon the acts of Allâh, تعالى, and meaning by this nothing less than the nullification of restraints, then he is right in meaning even though his expression is reprehensible.

If it is said: Reason is the permitter because it offered a choice between doing and not doing, since it prohibited what is bad and obliged what is good, and offered a choice with regard to what is neither good nor bad.

We shall say: We have refuted pronouncing good and bad by reason, and this is based on it and is therefore refuted. Furthermore, to call reason a permitter is figurative, as is calling it the cause of obligation, for reason recognizes either the preponderance or the nonpreponderance [of doing]. The meaning of its obligatoriness is the preponderance of doing over abandoning, and reason recognizes this.

But the meaning of being permissible is the nullification of the preponderance. Reason is, then, an indicator, not a permitter.

For it is neither a preponderator nor an equiponderator. Rather, it is an indicator of preponderance and equiponderance.

Furthermore, we ask, on what basis do you object to those [holding the position] of suspension when they deny the equiponderance of doing and not doing? For they say that of all the acts that reason pronounces good or bad, there is none but it is possible for the *Sharî'a* to come with its obligation, and therefore indicating that it is distinguishable by an essential characteristic based upon which it becomes a divine grace that forbids obscenities and calls to worship. This is why Allâh, تعالى, has obliged it. But reason cannot independently apprehend this. It is also possible for the *Sharî'a* to come with its [an act's] prohibition, indicating that it is distinguishable by an essential characteristic and, thereby, calls to obscenities—nor can reason independently obtain this, for Allâh exclusively possesses its knowledge. This is their position.

On what basis do you object to those [holding the position] of prohibition? For they said, "We do not concede to the equiponderance of doing and not doing because managing the possessions of someone without his permission is bad. And Allâh, تعالى, is the Possessor but did not grant permission."

If it is said: If this was bad, it would have been prohibited and [revelation] would have come [indicating this], and the absence of this is an indication that it is not bad.

We shall say: If it was good, it would have been permitted, and the absence of revealed authority is an indication that it is not good.

If it is said: When Allâh, تَعَالَى, informs us that it is beneficial and harmless, He is then permitting it.

We shall say: An owner's informing of us that his food is beneficial and without harm ought not be [considered] permission.

If it is then said: An owner from among us is vulnerable to harm, while Allâh is not vulnerable. The handling of His creations in relation to Him is analogous to using a person's mirror by looking into it, or his wall for shade, or his lamp for light.

We shall say: If the evil of using another person's possession is based on him being harmed and not on the absence of his permission, then it would [still] be bad even if he permitted it, provided that he is being harmed. Why should it not be so! while the owner's withholding of the mirror, shade, or the lamp's light is considered bad, while Allâh has prohibited his servants from a variety of food, which is not considered bad? So, if this were to harm [His] servants, then there is absolutely no act that contains a hidden harm unattainable by reason, unless it is conceivable regarding it, but that revelation comes prohibiting it. Furthermore, we ask why do you hold to your statement that since the Creator is not vulnerable to harm by our conduct, it is therefore permissible? For moving someone else's mirror from one place to another, even though its owner is not harmed by it, is prohibited. But only

looking into it is permissible because looking is not manipulating the mirror, just as looking toward Allâh, تعالى, or toward the heavens is not manipulating what is being seen; nor is sitting in the shade manipulating the wall; nor is utilizing light manipulating the lamp. But if a person was to actually manipulate these very things, it may be ruled prohibited, unless revealed authority indicates its permissibility.

If it is said: Allâh, تعالى, created flavors in [food] and tastes, proving that He intended for us to benefit from them, for He was /1:65/ capable of creating them without flavors.

We shall say: The Ash'arites and most of the Mu'tazilites are in agreement on the impossibility of these [foods] being void of accidents, namely those that they [foods] are liable to have. But this is not sound. Even if we concede, still He may have created it not for anyone to benefit from. Indeed, He created the whole world without a reason. Or He may have created it [flavor] so that the reward for avoiding [the foods], in spite of their desirability, is known, just as one is rewarded for avoiding desirable evil [things].

As for the position of those who hold that it is prohibited, its falsity is more manifest since its prohibition is neither known necessarily through reason nor through a [rational] proof. Furthermore, prohibition means that the aspect of abandoning preponderates over the aspect of doing because of the harm associated with the aspect of doing. So, from where is this known while no revealed authority has come and reason cannot determine it? Rather, one may be harmed immediately by abandoning

pleasurable things. So how can abandoning them become better than doing them?

Also, their statement that it is manipulation of someone's possession without his permission is corrupt because we do not concede to its evil if it were not for its forbiddance and prohibition by the *Sharî'a*. Also, if it were subject to *'âda* [customary norms], it would then be bad with respect to whoever has been harmed by manipulating his ownership. Yet what is bad is preventing that which has no harm in it. Moreover, we have explained that the essence of recognizing bad is reducible to the thwarting of [one's] interests, and this is senseless.

As for the position of suspension, if they meant by it that ruling is suspended pending the arrival of revealed authority and that there is no rule at present, this then is correct. For the meaning of rule is the divine address. And there is no rule before the coming of revealed authority. But if they meant by it, "We suspend [judgment]; for we do not know whether they are prohibited or allowed," this is incorrect because we do know that there is no prohibition. For its meaning is when Allâh, تعالى, says, "Do not do it." However, there is no permission, since the meaning of permission is when He says, "If you will, do it; if you will, leave it." But nothing of this has come [from Allâh].

THE SECOND ASPECT

THE CATEGORIES OF RULES

This is comprised of an introduction and fifteen discussions. As for the introduction, the categories of rules established for actions of the loci of obligations are five: Obligatory [*wâjib*], prohibited [*mahzûr*],[1] allowed [*mubâh*], recommended [*mandûb*], and reprehensible [*makrûh*]. The reasons for this categorization is that the *Sharî'a* address comes either requiring *doing*, *not doing*, or the option between doing or not doing. Therefore, if it comes requiring action, it is then a command, and it is either associated with a notification of punishment for its abandonment—therefore becoming obligatory—or not associated [with punishment]—thus becoming recommended. As for that which comes requiring abandonment, if it indicates punishment for doing it, it is then a prohibition; otherwise, it is reprehensible. But if it comes as an option, it is allowed.

It is necessary to mention the definition of each [category] consecutively. As for the definition of obligatory [*wâjib*], we have mentioned part of it in the introduction of this book, and we shall

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[1] Ghazâlî uses the terms '*harâm*' and '*mahzûr*' interchangeably to mean prohibited. *Al-Mustasfâ*, 1:55.

now mention what has been stated concerning it.

Some people have said that it [*wâjib*] is that in which punishment is prescribed for its abandonment. But this was objected to on the basis that the punishment for abandoning an obligation may be waived. However, this does not remove it from being obligatory because obligatoriness is readily realized, while its punishment is awaiting.

Also, it has been said that /1:66/ it is that in which punishment is threatened for its abandonment. But this is objected to by saying that if He has threatened, then the realization of the threat would be necessary since the speech of Allâh, تعالى, is the truth. However, it is conceivable for Him to waive it [the threat] and not to punish.

It is also said that [an obligation] is that in which punishment is feared for its abandonment. But this [position] is refuted by [considering] that whose prohibition or obligatoriness is uncertain, for it is not an obligation. Yet punishment is feared for its abandonment.

Al-Qâḏî Abû Bakr [al-Bâqillânî],[2] رحمه الله, said that it is best to say, with regard to its definition, that it [obligation] is that in which its abandoner is denounced and punished in accordance with the *Sharî'a* in a certain way. For its denunciation is readily realized,

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[2]al-Bâqillânî was a prominent fourth century Ash'arî theologian and Mâlikite jurist. He is said to have been a major element in the systemization and growth of Ash'arite theology. See the Encyclopaedia of Islam, new ed., s.v. "al-Bâḵillânî" by R. J. McCarthy.

while its punishment is uncertain. His [al-Bâqillânî's] statement, ". . . in a certain way," meant to include an obligation with options [*wâjib mukhayyar*] because one is still blamed for abandoning it and its alternative, as is the case with an obligation with latitude [*wâjib muwassa'*]. For one is still blamed for abandoning it and abandoning the intention to obey it.

If it is said: Is there a difference between '*wâjib*' and '*fard̲*'?

We shall say: In our view, there is no difference between them. Rather, they are synonymous terms, similar to '*h̲atm*' [necessary] and '*lâzim*' [must]. The followers of Abû Hanîfa have agreed to specify the term '*fard̲*' as that whose obligatoriness is decisively established, and specify the term '*wâjib*' as that whose obligatoriness is known only through conjecture [*z̲an*]. But we do not [specify] the categorization of an obligation as decisive or conjectural. And there is no restriction in the technical usage of terms after understanding the meanings.

Al-Qâd̲î has stated that if Allâh obliged something upon us but did not threaten punishment for abandoning it, it is still an obligation because obligatoriness is [established] solely on the basis of His obliging, not on the basis of punishment. But this is an open question. For there is no sense in attributing obligatoriness to something whose doing and abandonment equiponderate with respect to us, since we do not conceive of the obligatoriness [of something] except when its doing preponderates over its abandonment with respect to our objectives. So if preponderance is negated, there is no meaning for obligatoriness at all.

Now, if you know the definition of *wâjib*, that which is prohibited [*mahzûr*] is its opposite. So its definition should not be difficult to perceive.

As for the definition of allowable [*mubâh*], it has been said regarding it that it is that whose abandonment and doing are equivalent. But this [position] is refuted by [considering] the acts of a child, an insane person, or an animal; it is also refuted by the acts of Allâh, تعالى, since many of His acts in relation to us are equivalent to [their] abandonment. In fact, they are always indifferent with regard to Allâh, تعالى. Similarly, acts before the revelation of the *Sharî'a* are equivalent to abandoning [them]. Thus, nothing of this [sort] is called *mubâh*. Rather, its definition is that whose permission to do or abandon has come from Allâh, تعالى. [It is] neither associated with the denunciation or the praise of its doer, nor with the denunciation or the praise of its abandoner.

It is possible to define it [*mubâh*] as that whose doing or abandoning the *Sharî'a* declares as harmless; nor is there benefit with respect to its performance or abandonment. This [wording] guards against the abandonment of what is allowable for [what is] disobedient, for one suffers not by way of abandoning *mubâh*, but by way of committing disobedience.

As for the definition of what is recommended [*nadb*], it is said in its regard that it is that whose doing is better than its abandoning, where no blame follows its abandonment. But an argument posed against this [definition] is that of eating before the coming of the *Sharî'a*, for it is better [to eat] than to abandon [eating], because of both its pleasure and sustenance.

The Mu'tazilites said that it [*nadb*] is that whose doer, upon doing it, deserves praise, though he does not deserve blame for its abandonment. But an argument posed against this concerns the acts of Allâh, تعالى, for they are not called *mandûb* even though He is praised for every action and is never blamed. Thus, more appropriately, regarding its definition, it is that which is commanded where blame does not follow its abandonment, insofar as abandonment without a need for a substitute is concerned, guarding against obligations with options [*wâjib mukhayyar*] or with latitude [*wâjib muwassa'*].

As for *makrûh* [reprehensible], it is an ambiguous term of several meanings in the technical usage of the /1:67/ *fuqahâ'*. One of the [meanings] is *prohibited*. For al-Shâfi'î, رحمه الله, has often said, "I dislike [*akraha*] such and such," meaning *prohibition*.

Secondly, it is that which has been prohibited, but aa a prohibition for purity—that is, that whose abandonment is indicated as better than its performance, even though there is no punishment prescribed for it, just as the recommended indicates that the performance of something is better than its abandonment.

Thirdly, it [*makrûh*] is the neglect of a worthier [act], although it is not prohibited—such as neglecting the mid-morning prayer [*duhâ*], not because of a revealed prohibition concerning it [its abandonment], but because of the abundance of its excellence and reward. It has been said that its abandonment is reprehensible.

Fourthly, it is that whose prohibition is liable to doubt and uncertainty, like the meat of predatory animals or a small amount of *nabîdh*. But this is an open question. For if one's own *ijtihâd*

leads him to consider it prohibited, it is thus prohibited for him. But if one's *ijtihâd* leads him to consider it permissible, then there is no meaning for reprehensibility in this regard, except when the arguments of the opponents agitate his soul and leave an impression on his heart. For he, صلى الله عليه وسلم, said, "Sin is that which agitates the heart." Therefore, it is not unappropriate to apply the term *karaha* here because of the fear of it being prohibited, even though it is most likely permissible. This is valid according to those who hold that the correct *ijtihâd* [*musîb*] is one.

As for those who regard every *mujtahid* to be correct, permissibility, according to them, is decisive when it overwhelms his [the *mujtahid's*] conjecture.

Now, since we have completed clarifying the categories [of *a<u>h</u>kâm*], we shall next address the discussions that branch from them.

I. DISCUSSION: An obligation [*wâjib*] is divisible into that which is fixed [*wâjib mu'ayyan*] and that which is unspecified within particular categories. This is called an obligation with options [*wâjib mukhayyar*], as in the case of one option among those required for atonement; for that which is obligatory; among them [the options], one is not specifically defined.

The Mu'tazilites deny this and state that there is no sense in an obligation accompanied by options because they are contradictory. But we claim that this is rationally possible and that it has occurred in the *Sharî'a*.

As for the possibility of its rational proof, it is like when a

master says to his servant, "I have made either sewing this shirt or the construction of this wall an obligation upon you today. Whichever you do, I will be satisfied and will reward you for it. But if you abandon both, I shall punish you. Again, I am not obliging both, but I only oblige one—not specifically defined—namely which ever you wish to do." This is an intelligible discourse, and it is not possible to say that he did not make anything obligatory upon him because he exposed him to punishment for neglecting both. Therefore, he [the servant] is not free from obligation. Nor is it possible to say that he obliged both because he explicitly stated the opposite. Also, it is not possible to say that he obliged one [task] specifically, either sewing or constructing, because he explicitly stated the option. Thus, there is no alternative but to say that the obligation is one [of the options] but not specifically defined.

As for the proof of its occurrence in the *Sharî'a*, it is in the characteristics of atonement. Indeed, the obligation of emancipating a slave has options with regard to which individual slave. Similarly, the marrying of a virgin woman seeking marriage to one of two suitable proposing men is an obligation, while there is no way to oblige [marrying] both. Also, confirming the imamate for one of two qualified for the imamate is an obligation, while [confirming] both is impossible.

If it is said: The obligation is all the options of atonement. Thus, if he abandons one, he is punished for all. But if he performs all of them, they are regarded as fulfilling the obligation. And if he

performs one, the other [options] are removed. Yet an obligation may be removed /1:68/ by reasons other than fulfillment, and this is not absurd.

We shall say: This rule is not consistent with the case of two *imâms* nor of the two eligible men, for combining in this regard is prohibited. Therefore, how could all [options] be obligatory? Moreover, this is in opposition to the consensus concerning the options of atonement. For the whole community is in agreement that all [options] are not obligatory.

They [the Mu'tazilites] have argued that if the characteristics of the three options are equal in the sight of Allâh, تعالى, with regard to the benefit of the servant, then all must be obligated to ensure equality between the equals. But if one of them is distinguished by a characteristic requiring obligatoriness, then it must be the obligation and should not be left unspecified among the others so that it is not confused with the others.

We shall say: Who conceded to you that actions per se have characteristics for which Allâh, تعالى, obliges them? Rather, obliging belongs to Him. It is for Him to identify one of three equal [options] and specify it as an obligation to the exclusion of the others. Furthermore, it is for Him to oblige one, but not specifically; He entrusts the specification to the choice of the locus of obligation for his acts, so that obedience does not become difficult for him.

They [the Mu'tazilites] have argued that an obligation is that to which obligatoriness is attached. So if what is obliged is one of the three options, then Allâh, تعالى, would know that to which obligatoriness is attached; so it is distinguished in His knowledge.

Thus, it becomes the obligation.

We shall say: If He obliges one [option], but not specifically, then we know it as being unspecified. For example, if a master addresses his servant, "I have obliged you with either sewing or construction," then how could Allâh, تعالى, know it, for He does not know it except by its characterization—and its characterization is that it is not specified. Thus, He knows it as unspecified, as it is. Now this is the substantiated [position]; that is, the obligation does not have an essential characteristic associated with the attachment of obligatoriness to it. It is merely an attribute of the address, and the address is based on utterance and remembrance.

Now, the creation of black color in one of two objects, unspecified, and the creation of knowledge in one of two persons, unspecified, is impossible. As for mentioning one of two [things], not specifically, this is possible, such as when one says to his two wives, "One of you is divorced." Hence, obligation is a statement that follows utterance.

If it is said: [If] one who obliges seeks something, his sought object must be distinguished in his mind.

We shall say: It is possible that his request is related to one of two things, such as when a woman says [to her guardian], "Marry me to one of the two seekers, regardless of which one he is"; or, [the statement] "Emancipate one of these slaves, whichever of them it might be"; or, "Give allegiance to one of these two imâms, whichever of them it may be." So what is sought after here is one of them, unspecified. And [as for] all that can conceivably be

sought, its obligatoriness is also conceivable.

If it is said: Allâh, تعالى, knows what the locus of obligation will do and that through which the obligation is fulfilled. Therefore, it is specified in the knowledge of Allâh, تعالى.

We shall say: Allâh, تعالى, knows it as unspecified, then He knows that it will be specified by his [the locus'] action, so long as it was not specified before doing it. Furthermore, if one performs all [the options] or does none of them, how could one [option] be specified in the knowledge of Allâh, تعالى.

If it is said: Why is it not possible for [Him] to oblige one of two persons but not specifically? And why do you say that a collective obligation [*farḏ al-kifâya*][3] is laid upon everyone although its obligatoriness is discharged by the action of one?

We shall say: [This is] because obligatoriness is realized by punishment, and it is not possible to punish one of the two persons, unspecified. But it is possible to say that one will be punished for [neglecting] one of two actions which is not specified. /1:69/

II. DISCUSSION: Obligation is divisible, with regard to

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[3]The phrase '*farḏ al-kifâya* 'refers to those obligations for which the Muslim community at large is responsible but can be discharged when a lesser number of individuals—or even one person—fulfill them. Funeral prayers, greetings, etc. are a few examples. See the *Encyclopaedia of Islam*, new ed., s.v. "Farḏ" by T. W. Juynboll.

time, into *mu<u>d</u>ayyaq* [confined] and *muwassa'* [latitudinal].

Some people have said that [the notion of] latitude contradicts obligatoriness. But this is false [both] rationally and on the basis of the *Sharî'a*. For when a master says to his servant, "Sew this garment during the light of this day in either its beginning, middle, or end, in whichever one you wish. Whenever you do it, you will have fulfilled my obligation," this is rational. It does not go beyond [the three options]. Either it is said that he [the master] did not obligate anything at all, or he obligated something which is restricted [in time]. Both of these are absurd. So nothing remains except that he has given an obligation with latitude.

As for the *Sharî'a*, *ijmâ'* has fixed the obligatoriness of prayer at noon; and if a person prays [at that time], he is fulfilling the obligation and obeying the obliged command even though there is no restriction.

If it is said: The essence of obligation is that where abandonment is not permissible; in fact, one is punished for it. But [as for] prayer and sewing, if they are attached to the last part of the [prescribed] time, one is then punished for its abandonment. Therefore, its obligatoriness is in the last part of the time. As for before that [time], he chooses between doing or abandoning it—but its performance is better than its abandonment. This is the definition of '*nadb*.'

We shall say: Unveiling this question is to state that rationally there are three categories: First, an act in which there is absolutely no punishment for its abandonment—and this is

recommended [*nadb*]; second, an act in which absolutely there is punishment for its abandonment—and this is obligation [*wâjib*]; and third, an act in which there is punishment for its abandonment with respect to the entire time, but one is not punished in relation to certain parts of the time—and this is a third category, thus needing a third term, while its essence does not exceed *nadb* and *wujûb*. The most appropriate term for it is '*wâjib al-muwassa'*' [obligation with latitude] or '*unabandonable nadb*.' But we have found the *Sharî'a* calling this category *wâjib* on the grounds that *ijmâ'* has established that the intention to pray at the beginning of its time duration is for [discharging] the obligation; and one is rewarded for its performance [with] the reward of an obligation, not of a recommendation.

These three categories then cannot be denied rationally. Thus, the dispute is reduced to terminology. But what we have mentioned is more appropriate.

If it is said: This is not a third category but *nadb* with respect to the beginning of the time duration, since not doing it is possible at that time. Yet with respect to the last part of the time, it is inevitable because delaying it beyond that cannot be allowed. Also we concede to your statement that one intends [to fulfill] an obligation. Still, it is obligatory in the sense that it becomes an obligation, similar to when a person pays *zakât* in advance, intending to fulfill the obligation of *zakât*, and is rewarded with the reward of advancing an obligation, not the reward of *nadb*, nor the reward of an obligation which is not urgent.

We shall say: Your statement that it is possible to delay it with respect to the beginning of the time and is therefore praiseworthy [*nadb*] is wrong because this is not the definition of *nadb*. Rather, *nadb* is that whose abandonment is unconditionally permissible, while it is not permissible to abandon this except with a condition that it should be done afterward or [at least] intended to be done. And whatever is permissible to abandon for an alternative or a condition is not *nadb*, on the grounds that if one was commanded with, [say], manumission, then there would not be any slave but whose emancipation may be abandoned by him [the master], but on the condition of freeing another slave.

Similar [to this] is the case of the options for atonement. There is not one [option] but whose abandonment is possible, but for an alternative. This is not *nadb*. In fact, just as that is called an obligation with options [*wâjib mukhayyar*], this is called an unconfined obligation [*wâjib ghayr muḏayyaq*]. Furthermore, since the meaning is agreed upon, namely the divisibility into the above three categories, there is no need to dispute. Moreover, that whose abandonment is permissible through a condition is different than that whose /1:70/ abandonment is not at all permissible and is different than that whose abandonment is unconditionally permissible, which is a third category.

As for what you have mentioned, that it is advancing the obligation and is therefore called an obligation, this is contrary to the *ijmâ'*, since the intention of advancing *zakât* is obligatory. But none among the early generations made his intention for prayer in the beginning of its time differently than the way he made his

intention in the last part; they did not distinguish [between them] at all. This is certain.

If it is said: Some people have said that [an act of worship] occurs as being supererogatory [*nafl*],[4] while the obligation is dismissed on one's part. Others have said that it occurs as being uncategorized. For if it continues [as a command] with the loci of obligation until the end of the time, it then becomes evident that it occurs as an obligation. But if he dies or becomes insane, it occurs as supererogatory.

We shall say: If this were to occur as supererogatory, then it would have been permissible by intending [to perform] a supererogatory [act]. Rather, it is impossible for the intention of an obligatory [act] to exist on the part of one who knows it to be supererogatory, since intention follows knowledge. The position of suspension is invalid because the *ummah* is unanimous that whosoever dies in the middle of an [obligation's] time [period] after completing the prayers, dies fulfilling the obligation of Allâh, تعالى, as he intended and performed it; for he said, "I intend to perform the obligation of Allâh, تعالى ."

If it is said: You have based your statement on [the premise] that abandoning it is permissible on a condition, namely having determination to obey or to perform [the command]. But this is not

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[4]For a consise defintion, consult Qal'ajî, *Mu'jam Lughat al-Fuqahâ'*, p. 485.

so because an obligation with options is that which has the option between two [or more] things, as in the case of atonement. But the *Sharî'a* does not give options between performing prayer and [simply] having the determination. For His statement, "Pray at this time," does not make any mention of determination. Therefore, obligating it is additional to the requirement of the expression, for if the person was heedless and did not actually make determination and died in the middle of the time range, he would not be disobedient.

We shall say: As for your statement that if such a person forgets, he would not be sinful, this is conceded. The reason for this is that a person who has become heedless is not responsible. But if he was not heedless of the command, then he cannot be free from determination except by its opposite, which is determination to absolutely abandon it. And this is prohibited. Also, that without which one cannot escape a prohibition is an obligation. Therefore, this proof indicates its obligatoriness even though the literal meaning of the expression per se does not indicate it.

Now the indication of the rational proof is stronger than that of [revealed] expression. Therefore, the essence of this discussion is reduced to [the fact] that an obligation with latitude is like an obligation with options, with respect to the beginning of [the prescribed] time, as well as its end. For if he were to be discharged from it by the end [of its time], he would not be disobeying, provided he has performed it in the beginning.

III. DISCUSSION: If one suddenly dies during the time

period of a prayer after resolving to fulfill it, he would not be disobeying.

Some of have said that if one were to adhere to the precise meaning of obligatoriness [*wujûb*], he [who had died] would be disobeying. But this is contrary to the *ijmâ'* of the early generations. For we know that they did not hold as disobedient he who died suddenly when a measure [of time] for four *rak'as* elapsed after the meridian time, or when a measure [of time] for two *rak'as* elapsed at the beginning of dawn. Nor did they attribute negligence to him, particularly if he had started performing ablution or proceeding to the Mosque but died on the way. Indeed, it is impossible that he be disobedient while deferral has been permitted to him. For if one does what he is allowed, how is it possible to pronounce him disobedient?

If it is said: Deferment is permitted to him on the condition that he remains safe.

We shall say: This is absurd because eventuality is undisclosed to him. If he were to ask us saying, "Eventuality is concealed from me, and I owe the fasting of one day. But I wish to delay it until tomorrow. Is this deferment permitted despite [my] ignorance of eventuality? Or will I be disobedient for delaying it?" he must be answered.

But, then, if we say that he is not disobeying, why has he been sinful for dying, which is /1:71/ beyond him? And if we say that he is disobeying, then this is contrary to the *ijmâ'* on obligation with latitude [*wâjib muwassa'*].

But if we say, "If it were in the knowledge of Allâh that you will die before tomorrow, you are then disobeying; and if in His knowledge you were to live, then you may delay," he shall say, "How will I know what is in Allâh's knowledge? So what is your opinion with respect to the one who does not know?" Thus, it is necessary to resolve its lawfulness or prohibition.

If it is said: If delay is always permitted and he is not disobeying if he dies, then what is the meaning of its obligatoriness?

We shall say: Obligatoriness is asserted by the fact that delay is not allowed except on the condition of resolving [to fulfill it]. Now, the resolve to delay is permitted only for a term wherein remaining alive preponderates in his thoughts, as in his delaying of the prayer from one hour to the next, and his delaying of the fast from one day to another, resolving at all times to attend to them.

Also, this is the case with his deferment of performing *ḫajj* from one year to another. For if an ill person facing death resolves to delay [fasting] for a month, or if a weak elderly person decides to delay [*ḫajj*] for several years and it preponderates in his mind that he may not live until that time, he would be sinning by such a delay. Even if he does not die and successfully performs [the obligations], he would [still] be accountable for the intent of his thinking. Such is the case with a *mu'azzir*[5] beating a person

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[5]The term '*mu'azzir*' refers to one who inflicts *ta'zîr*, which is the discretionary power of the judge to determine the penalty for crimes which have no prescribed punishment in the *Sharî'a*. See

devastatingly, or one lancing an abscess while it preponderates in his mind that it is fatal; he would be sinning even if the man survives.

It is for this reason that Abû Hanîfa said that delaying *hajj* is not permissible because surviving until the coming year is not likely.

As for delaying fasting and *zakât* for a month or two, this is permissible because death is not very likely during this period. Al-Shâfi'î, رحمه الله, holds that surviving until the next year is highly expected in the case of a young healthy person but not in the case of an elderly or sick person. But, a *mu'azzir* who does what he strongly believes to be safe, and [yet] the person [being inflicted] dies, still he is liable; not because he has committed a sin, but because he made a mistake in his assumption, and a person in error is liable without being sinful.

IV. DISCUSSION: They have differed regarding that without which an obligation is not complete, as to whether it can be characterized as an obligation.

The fact of the matter is that this is divided into that which is not of the volition of the locus of obligation, such as the cases of the *faculty* of acting, the *hand* in writing, and the *leg* in walking. These cannot be characterized as obligatory. Rather, their absence prevents the laying of obligation, except in the view of those who permit obliging the unbearable. Similar to this is the obligation of

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Qal'ajî, *Mu'jam Lughat al-Fuqahâ'*, p. 136.

the presence of the *imâm* for Friday [prayer] and the presence of a sufficient number [of worshippers]; for this is not in his [power]. Therefore, this cannot be characterized as obligatory. Rather, the obligation is nullified by its infeasibility.

As for that which is contingent upon the choice of the worshipper, [this] then is divided into a *Sharî'a* condition and a perceptible [condition].

The *Sharî'a* [condition] is like ritual purity for prayer; it must be characterized as obligatory at the time prayer becomes obligatory, for obligating prayer also obligates that through which an action becomes prayer.

As for the perceptible—such as rushing to Friday [prayer] or walking to *ḫajj* and to the places where rites of worship are to be performed—[this] must, then, be characterized as obligatory as well. For commanding one who is far from the House to [perform] *ḫajj* is certainly a command to travel to it. Similarly, when it is obligatory to wash the face and it is not possible without washing part of the head, or when fasting is obligatory and it is not possible except by abstaining [from food, drink, etc.] during the part of the night before dawn, then this [also] is characterized as obligatory. So we say that the action of the locus of obligation, without which an obligation cannot be achieved, is an obligation.

This is more appropriate than if we say that it is obligatory to arrive /1:72/ at an obligation by that which is not obligatory, since our statement, "It is obligatory to do what is not obligatory," is contradictory.

But our statement, "That which was not obligatory has

become obligatory," is not contradictory because it *is* obligatory. Yet the *principle* has been obligated by intending its obligatoriness. The mean has become obligatory through the obligatoriness of the intended obligation. It has become an obligation, in any case, even though the cause of its obligation is different than the cause obligating the principle one.

If it is said: If [the mean] were to be obligatory, it should be measurable. So how much of the head is required to be washed, or what extent of the night is [required] for abstention?

We shall say: The mean of achieving an obligation is obligatory, and it is not specified. In fact, it is mandatory to wipe the head. But the minimum range to which the term [*mash*] applies is sufficient. But this is not specified. So, similarly, what is obligatory is the minimum with which washing the face is possible. This measurement is sufficient regarding obligation.

If it is said: If it [the means] were obligatory, then there would be reward for doing it and punishment for abandoning it, while one who abandons ablution is not punished for what he neglected in washing the head or the face. And one who abandons fasting will not be punished for neglecting to fast [part of the] night.

We shall say: Who told you of this? And from where did you know that the reward in *hajj* of one who comes to the Ka'ba from afar is not greater than the reward of one near? or that when one toils his reward does not increase, even though it be as a means?

As for punishment, it is for abandoning fasting or ablution. It is not distributable on the individual parts of the action. Therefore, there is no sense in relating it to particulars.

If it is said: If one were capable of confining [his ablution] to washing the face, he would not be punished.

We shall say: This is conceded, for it is obligatory only for a person who is unable [to wash only his face]. As for the able, there is no obligation on him [to wash part of his head].

V. DISCUSSION: Some say: If a lawful wife were to be mistaken for an unrelated woman, then it is obligatory to desist from both of them, though the unlawful one is the unrelated woman and the wed wife is lawful.[6] However, it is incumbent to abstain from her.

But this is contradictory. Rather, prohibition and lawfulness are not inherent characteristics of them. In fact, they are related to the act. Thus, [since] the act of sexual intercourse is prohibited with regard to both of them, what is the sense, then, in our saying that sexual intercourse with the lawful wife is lawful and with the unrelated woman prohibited? Rather, both are unlawful. One of them for the reason of her being unrelated, and the other for being mistaken for the unrelated woman.

Therefore, the dispute concerns the *'illa* [underlying reason], not the judgment as such. This has only entered imaginations

[6]This refers to marital sexual intercourse.

because the characterization as lawful and prohibited resembles the characterization of inability and ability, black and white, and other perceptible and physical characteristics. This is a delusion, to which we have already called attention, since [the *Sharî'a*] rules are not at all essential characteristics of objects.

Indeed, we say that if a foster sister is suspected to be among the women of a town and the [foster brother] marries one of these [towns-women], it [the marriage] is lawful, although it is possible that she be the foster sister in the knowledge of Allâh, تعالى. But we do not say that in the knowledge of Allâh, تعالى, she is not his wife, since there is no meaning for *wife* other than the lawfulness of having sexual intercourse with her on the basis of [lawful] marriage—and it has been lawful [for him] to have sexual intercourse with her. Therefore, she is lawful as far as he is concerned, and in the sight of Allâh, تعالى. Nor do we say that she is unlawful in the sight of Allâh, but lawful for him based on his assumption. Rather, if lawfulness is assumed, it is lawful in the sight of Allâh, تعالى. A verification of this will be given in the discussion regarding the rectitude of *mujtahids*.

As for when a person says to his two wives, "One of you is divorced," it is then possible to say that sexual intercourse with both of them is lawful. Divorce is not in effect because he did not specify one as the locus; it is as if he sold one of his slaves. But it is [also] possible /1:73/ to say that both are unlawful [to him] because it is not required to specify the locus of divorce. But then he must specify. Most *fuqahâ'* have adheredTo this. Still, what is to be followed regarding this is what the *mujtahid's* opinion necessitates.

As for concluding that one of them is unlawful while the other is [a lawful] wife—just as they have imagined with regard to confusing a legal wife with an unrelated woman—this sheds no light here, for that [the former case] was ignorance on the part of the man, occurring after the specification. But as for [the latter] case, it is not in itself specified. But he is known to Allâh, تعالى, to have divorced one of them, not specifying her.

If it is said: When it is incumbent for him to specify, Allâh, تعالى, then, knows which one of them he will specify. Therefore, she becomes the unlawful, specified divorced one in the knowledge of Allâh, تعالى. And this is only difficult for us [to comprehend].

We shall say: Allâh, تعالى, knows things as they are. So, He does not know a divorce whose locus has not yet been specified as the particular [one]. Rather, He knows it is subject to specification when the divorcing one specifies it. Furthermore, He knows, for example, that he will specify Zaynab; and therefore the divorce will be specified when he specifies it, not before.

So, we say in regard to that which is an obligation with options [*wâjib mukhayyar*], Allâh, تعالى, knows what the worshipper will choose from among the options of the atonement. But He does not know it as specific obligation [*wâjib bi'aynihî*], but as an unspecified obligation [*wâjib ghayr mu'ayyan*], which is not specified immediately. Then He knows it as becoming identified by way of specification. The proof is that if He knows that one will die before atonement and before specifying it, then He knows the obligation or the divorce the way they are, that is, as unspecified.

VI. DISCUSSION: They have disputed with regard to an obligation which is not circumscribed by definite limits, such as wiping the head, tranquillity during bowing and prostration, and the duration of standing [in prayer]; for if he exceeds the minimum requirement for [fulfilling] the obligation, will the addition be characterized as obligation? For example, if he wipes the entire head, is it considered in its entirety an obligation? Or what is obligated is the minimum [requirement] and the rest is recommended?

Some people have opined that the entire [action] is characterized as obligatory because the relationship of the entirety to the command is one, and the command, itself, is one, which is an obligating command. Furthermore, some [parts] are indistinguishable from others, for [performing] all is [considered] obeying.

It is more appropriate to say that the addition exceeding the minimum is recommended [*mandûb*] because nothing was obligated except the minimum, to which the term [‘*wâjib*’] applies. This is also with regard to tranquillity and standing [in prayer]. As for those [rites] which occur sequentially, they are more evident. And so it is with wiping [the head], when it occurs in succession, and that of its totality, which occurs simultaneously, though the parts [of wiping] are indistinguishable by either gesture or specification. Hence, it is possible to assert that the minimum portion of it is mandatory, and what remains is recommended, even though what is recommended is not distinguished from what

is obligated. For even without requiring a substitute there is absolutely no punishment for abandoning the remainder that exceeds the minimum. Therefore, the definition of obligatory does not apply to it.

VII. DISCUSSION: *Obligatoriness,* by definition, is distinguished from *allowability* and *permissibility.* This is why we assert that whosoever assumes that when an obligation is abrogated permissibility occurs is in error. Rather, the truth is that when it is abrogated, the matter reverts to the state that preceded obligation—be it prohibition or permissibility and obligatoriness becomes, due to abrogation, as if it did not exist.

If it is said: Every obligation is permissible and more, for the permissible is that which upon doing there is no punishment. Also, there is no punishment for executing an obligation, which is the very notion of permissibility. Therefore, when an obligation is abrogated, the /1:74/ punishment for abandoning it is annulled, as well, and the annulment of the punishment for doing it continues, which is the very meaning of permissibility.

We shall say: This resembles one's statement, "Every obligation is permissibility and more [i.e., what makes it an obligation]; so when the obligation is abrogated, permissibility remains." No one adheres to this—and there is no distinction between the two statements. Furthermore, both of them are delusions. Rather, an obligation does not imply the notion of permissibility; for the essence of permissibility is choosing between

doing and *not doing*, and the equiponderance between them is determined by the *Sharî'a*. This is negated in an obligation.

The mention of this question here is more appropriate than discussing it in the "Book of Abrogation." For it is an investigation of the essence of obligation and permissibility, not of the essence of abrogation.

VIII. DISCUSSION: As you understand that obligation does not contain permissibility, then understand that the permissible does not include obligation. Furthermore, the permissible is not obliged due to their mutual contradicting definitions, as it has been mentioned above, contrary to al-Balkhî. For he said that the permissible is commanded but is short of the recommended [*nadb*], just as the recommended is commanded but is short of obligation. This is absurd, since command is requiring and bidding, while permission is not bade, but rather there is permissibility therein and no restriction. So when the term *command* [*amr*] is used for permission, it is figurative.

If it said: Abandoning the prohibited is obligatory, while permissible repose [in marriage] is abandonment of the prohibited, such as adultery, stealing, and theft. Also, the permissibility of silence or utterance is abandonment of infidelity and lying; and abandoning infidelity, lying, and adultery is commanded.

We shall say: A prohibition may be abandoned by what is recommended. Should it then be an obligation? Also, a prohibition may be abandoned by another prohibition. Should a single thing,

then, be an obligation and a prohibition? This is mutually contradictory. This follows necessarily the position of those claiming that the commanding of something is a prohibition of its contrary, and the prohibition of something is commanding one of its contraries. Furthermore, it necessarily follows that prayer is prohibited if it is used as sanctuary by one abandoning the obligatory *zakât*. For it is one of the obligation's contraries. All of these are logical conclusions from their position, though they did not state them.

If it is said: Concerning the permissible [*mubâḫ*], does it fall under religious obligation? Is it considered of the commands?

We shall say: If *laying obligation* means bidding what is burdensome, this is not in the [definition of] permissible [*mubâḫ*]. But if it means that whose freedom and permission on the basis of the *Sharî'a* is known, it is [implied in] *laying obligation* [*taklîf*]. Also, if it means that whose obligation on the basis of *Sharî'a* is believed, then it is obligated, but not by permissibility per se, but on the basis of the principle of faith. *Al-Ustâdh* Abû Isẖâq [al-Isfrayînî] called it '*taklîf*' based on this latter interpretation. This is remote, although it is a dispute in terminology.

If it is said: May *permissible* be described as good?

We shall say: If good is that which its agent is to do, this is good. If it is that in which extolling or praising its agent has been commanded, or that whose deservingness of praise is necessary to believe—while bad is that which necessitates believing that its doer

deserves blame or punishment—then the *permissible* [*mubâh*] is not good.

Now, we have stipulated [the definition] with "believing the deservingness," thereby we excluded the sins of the prophets. For there is proof indicating that they have issued from them. But there has not been a command to debase or blame them. Yet we do believe their deservingness of this in spite /1:75/ of the grace of Allâh, تعالى, omitting this entitlement [from them] because He has commanded us to extol and praise them.

IX. DISCUSSION: The permissible [*mubâh*] is [one of the categories] of the *Sharî'a*.

Some of the Mu'tazilites have held that it is not [of the categories] of the *Sharî'a* because the meaning of *permissible* is the removal of restrictions from either doing or not doing, and this is established before the [arrival of] revealed authority. So the meaning of permitting something by the *Sharî'a* is leaving it as it was before the arrival of revealed authority and that it, [upon arriving], did not change its status. Everything whose prohibition or obligatoriness has not been established remains in the original state of negation. So it has been [categorized] as permissible [*mubâh*].

This requires deep examination. To shed light on it, acts are [divided] into three categories:

One category [is what which] remains in its original status. So nothing from the *Sharî'a* has come concerning it, neither in explicit expression nor through evidence of *Sharî'a* proofs. Therefore, it

should be said that whatever has [originally characterized it] continues and revealed authority has not effected it. Thus, there is no [legal] judgement concerning it.

As for the **second** category, *Sharî'a* permits choice regarding it and states, "If you will, do it; and if you will, do not do it." This is an address, and command has no expression but through an address. There is no way to reject it after it has been revealed.

The **third** category is that for which a choice-permitting address was not revealed. But the evidence of revealed authority indicates the removal of restriction with respect to doing it or abandoning it. Therefore, it has been recognized on the basis of revealed authority. If it were not for this proof, the rational proof would have acknowledged the removal of restrictions from an agent [of such acts] and his continuance in the original state of negation. But this is an open question, since revealed and rational proof have joined together concerning it.

As for the other two categories, they are also open questions because it is possible to say that the *Sharî'a* statement, "If you will, stand; and if you will, sit," is not renewing the command. Rather, it is an affirmation of the previous one. The meaning of its affirmation is that He does not change His command. Rather, He leaves it the way it is. Therefore, this is not a command issued by the *Sharî'a*. So it is not of the *Sharî'a*.

As for the other category, that is, where neither an address nor a proof has arrived concerning it, it is also possible for it to be denied by saying that the proof of revealed authority has indicated—regarding that which nothing has arrived [from *Sharî'a*]

bidding to do or bidding not to do—that a locus of obligation has a choice with regard to it.

This is proof for the generality [of a command] concerning endless acts. Thus, there will not be a single act without an indication from the *Sharî'a*. So its permissibility becomes from the *Sharî'a*; otherwise, it could be disputed that permissibility on the part of the *Sharî'a* is affirmation, not alteration. With affirmation, there is no renewal of the command. Rather, it is an explanation that nothing new has been originated with regard to it. In fact, it is an abstention from treating it. Verification of this will come in the discussion concerning the establishment of proof against a denier.

X. DISCUSSION: That which is recommended [*mandûb*] is commanded, while the permissible [*mubâh*] is not commanded. For command is requiring and bidding, but the permissible is not required.

As for the *mandûb*, its [doing] is required but with the omission of denouncing whoever abandons it. *Wâjib*, however, requires doing, but with the denunciation of whoever abandons it, either by abandoning it absolutely or abandoning it by changing it.

Some people have said that the *recommended* is not implied in a *command*. But this is corrupt for two reasons.

One of them is that it has become common knowledge in the language of the *'ulamâ'* that command is divisible into obliging commands [*amru ijâb*] and recommending commands [*amru istahbab*]. It [may] also be divisible into permitting commands [*amru ibâha*] and obliging commands—considering that the

imperative mood may be applied to mean permission, as in His saying, تعالى, " . . . *And when you end your pilgrim sanctity, then hunt . . . ,*"[7] and, "*When /1:176/the [Jum'a] prayer has ended, you may spread throughout the land.*"[8]

The **second** is that performing the permissible [*mandûb*] is unanimously regarded as obedience. But it is not obedience because of its being intended, for command, according to us, is different from will; nor because of its being existent, contingent, or owing to its essence or essential characters, for all of these apply to the permissible; nor for being rewarded for it, for the commanded person, even if he is neither rewarded or punished for obeying, is regarded as obedient. Reward is only to induce obedience, for the reward of his obedience is negated by infidelity. However, he is not excluded from being obedient.

If it is said: Command means a determined requirement wherein there is no option. But the recommended is associated with the allowability of abandoning it and exercising choice with regard to it. Yet your statement that he is called 'obedient' is opposed by the fact that if he were to abandon [*mandûb*], he would not be called 'disobedient.'

We shall say: Recommendation is a determined requirement where there is no option. For exercising choice [between options]

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[7]Qur'ân, 5:2.

[8]Qur'ân, 52:10.

means equiponderance. Therefore, when the side of doing preponderates by attaching reward to it, equiponderance and the exercise of choice are removed. For Allâh, تعالى, has said, with regard to prohibited acts, "*So let whosoever will, believe, and let whosoever will, disbelieve.*"[9] Therefore, it must not be considered that command [*amr*] is a determined requirement in the sense that the *Sharî'a* [necessarily] bids something of it per se. Rather, the *Sharî'a* seeks it for its benefit. Indeed, Allâh, تعالى, requires of his worshippers what is beneficial for them, and "*He likes not ingratitude from them.*"[10] Similarly, He requires the recommended for gaining the reward and says that doing or not doing are equal with respect to "Me." As for you, there is no equality, nor do you have a choice, for abandoning it is abandoning your benefit and your reward. Therefore, it is a determined requirement.

As for their statement that one would not be called 'disobedient,' it is because *disobedience* is a term of denunciation, while denunciation has been removed from him. Certainly, he may be called a 'violator,' or 'uncomplying,' just as its doer is called 'complying' and 'law abiding.'

XI. DISCUSSION: If you know that the prohibited is in opposition to the obligatory—for its abandonment is required, while

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[9]Qur'ân, 18: 29.

[10]Qur'ân, 39:7.

fulfilling an obligation is required—then you should be well aware that it is impossible for one and the same thing to be obligatory and prohibited or obedience and disobedience. However, the real meaning of *one* [*wâḫid*] may be hidden from you. So *one* is divisible into that which is *one* by species or *one* numerically.

As for one by species, such as prostration [*sujûd*], which is one species of acts, it may be divisible into the obligatory and the forbidden, where its divisibility is based on attributes and relativities, such as prostration to Allâh, تعالى, and prostration to an idol, for one of them is obligation and the other is forbidden. Yet there is no contradiction.

Some Mu'tazilites hold that there is contradiction because prostration is one commanded species. Therefore, it is impossible to forbid it. Rather one prostrating to an idol is disobeying by intending to glorify the idol, not by prostration.

This is an obscene error. For whenever the object of command and prohibition differ, it is not contradictory. Prostrating to an idol is different than prostrating to Allâh, تعالى, because the difference of relativities and attributes necessitates dissimilarity, and something cannot be different than itself. Also, dissimilarity is, at times, based on the difference in species; at other times, it is based on the difference of characterizations; and sometimes it is based on the difference in relationships. Allâh, تعالى, has said: "*Prostrate not yourselves to the sun and the moon; but prostrate yourselves to Allâh, who created them* . . . ."[11] And what is

[11]Qur'ân, 41:37.

commanded is not the same as what is prohibited. Furthermore *ijmâ'* has been constituted that he who prostrates to the sun is disobedient /1:77/ by both the prostration itself and the intent. Therefore, their statement that prostration is of one species is worthless, along with the divisibility of this species into various categories differing in purpose. For the aim of this prostration is the glorification of the idol to the exclusion of the glorification of Allâh, تعالى.

Now the difference in the aspects of the act is similar to the difference in the act itself, insofar as the occurrence of *otherness*, which removes contradiction. For contradiction exists only in relation to one, and there is no unicity with dissimilarities.

XII. DISCUSSION: What we have mentioned concerning that which is one by species is evident.

[This is not] the case as far as that which is one by specification, such as the prayer of Zayd in a home that is usurped from 'Amr, so that his movement in the prayer is one specific act which is attained by him and is related to his power. Therefore, those who concede with regard to the one species disputed here say that this prayer is invalid because holding that it is correct concludes that one and the same act is both prohibited and obligatory.

But this is contradictory. So it is said to them that this is contrary to the *ijmâ'* of the preceding generations, for they did not instruct the transgressors, upon repentance, to make up for the prayers performed in the usurped homes, despite the frequency of

its occurrence. Nor did they prohibit the transgressors from praying in the usurped estates.

The answer to this question was problematic for al-Qâḏî Abû Bakr, رَحِمَهُ الله. So he said that obligation is removed at its [occurrence], not by it [praying in an usurped estate] being based on the proof of *ijmâ'*, nor does it occur as an obligation. For an obligation is that for which there is reward. But how could one be rewarded for that which he is to be punished? Furthermore, his act is one, namely being in the usurped home. His prostration and bowing are voluntary existents for which he is to be punished and from which he is prohibited.

Anyone who is overwhelmed by *kalâm* decisively affirms this [position] due to the unicity of its existence in all of its situations. But that from which it has come into being is none other than its incidents. Yet he is to be punished for them and is disobeying through them. So how can he be seeking nearness [to Allâh] on the basis of that for which he is punished and obedient on the basis of that wherein he is disobedient?

This is not satisfactory to us. Rather, we say that it is possible for an action having two differing aspects, even though it is one in itself, to be sought through one of the aspects and reprehensible from the other. What is impossible is only the seeking of [it] through the aspect which is particularly prohibited, while the performing of it as a prayer is sought. Yet it is prohibited as usurpation.

Now, usurpation is conceivable without prayer; and prayer by itself is conceivable without usurpation. But the two aspects have

joined in one action. But that which the command and prohibition are dependent upon are the two differing aspects.

Similarly, it is conceivable on the part of a master to say to his servant, "Today, pray one thousand *rak'as*, sew this garment, and do not enter this home. If you pursue the prohibition, I will beat you. But if you obey the commands, I shall emancipate you." So the slave sews the garment and prays one thousand *rak'as* in the home. Thus, it would be appropriate for the master to beat him and emancipate him, saying that he obeyed by sewing and praying, but he disobeyed by entering the home.

So it is with the case we are considering without any difference. Furthermore, an act, even though being one, may include the accomplishment of two different things. One of which is demanded and the other is prohibited. Now, if a person were to shoot a single arrow at a Muslim in such a way that it pierces a disbeliever, or if he [shoots] it at a disbeliever in such a way it pierces a Muslim, then he would deserve reward and punishment. He would have rights to the booty /1:78/ of the disbeliever; but he would be executed in punishment for [killing] the Muslim because his one action includes two different aspects.

If it is said: It is unanimous that committing what is prohibited annuls a rite of worship when it violates its condition, in spite of intending to seek nearness [to Allâh] by prayer. Yet seeking nearness by disobedience is absurd. So how can one intend nearness?

There are several ways to answer this:

The first is that when *ijmâ'* is constituted on the rectitude of this prayer, then, accordingly, it must be necessarily known that the intention of seeking nearness is not a condition, or the intention of seeking nearness with this particular prayer is possible. Now, Abû Hâshim, al-Jubbâ'i and those who disputed the rectitude of this prayer are preceded by the *ijmâ'* of the *ummah* to disregard requiring the transgressors to make up for their prayers in spite of their numerousness. But how could the omission of intending nearness be denied while they have differed in requiting the intention of [fulfilling] an obligation and the intention of relating it to Allâh, تَعَالَى?

Some people have said that it is not obligated unless one intends the noon or afternoon prayer. Therefore, it is in the domain of *ijtihâd*. Others have held that the prayer becomes mandatory at the end of [its] time. For example, if a minor were to pray at the beginning of [a prayer's] time and then reach puberty by the end of [its] time, it is sufficient for him even if he were to reach puberty in the midst of the time, even though obligatoriness is not established with respect to him.

If it is said: Whosoever intends to pray, his intention includes seeking nearness [to Allâh].

We shall say: When the prayer is validated on the basis of *ijmâ'* and the intention of nearness is impossible, this intention is then nullified. It is adequate to say that the intention of nearness is related to some parts of the prayer, such as remembrance, recitation, and ali that does not contest the rights of the

usurpation's victim. For the existents are those [things] which are the recipients of the [usurped] home's facilities.

Moreover, how could this be correct on the part of the Mu'tazilites, while according to them the commanded does not know that he is being commanded nor that the rite of worship is mandatory before the completion of obedience, as it [its discussion] will follow. Therefore, how can one intend seeking nearness through an obligation while he does not know its obligatoriness?

The second answer, which is more proper, is that one intends seeking nearness by praying, but disobeys by usurping. We have demonstrated the separation of one of them from the other. Therefore, one who prays finds in himself the intention of nearness by praying even though this was in a usurped home. For if he remains idle and does not perform any act, still he will be a usurper in the state of sleep, even though [he] is not using [his] power. For he only seeks nearness [to Allâh] by his acts, while those acts are not conditions for him being a usurper.

If it is said: He is usurping by his act in the state of sitting and standing, though he has no act other than his standing and sitting. Yet he is seeking nearness by his acts. Therefore, he turns to seeking nearness by the very thing that renders him disobedient.

We shall say: Insofar as receiving the facilities of the home, he is a usurper. But insofar as performing the motions of prayer, he is [considered] to be seeking nearness, just as we have mentioned in the discussion concerning sewing. For it is

conceivable for him to be a usurper while it is not known that he is fulfilling the prayer. And it is [likewise conceivable] to know that he is fulfilling the prayer, while it is not known that he is a usurper. Therefore, they are two different aspects, even though the act itself is one.

The **third** answer is that we say on what basis do you object to al-Qâdî, رحمه الله, when he concluded that an obligation is removed at its [occurrence]—not by it—based on the proof of *ijmâ'*? For he conceded that it is disobedience, but that command does not indicate fulfillment when one performs what is commanded, nor does prohibition indicate the lack of fulfillment. Rather, fulfillment is derived from another proof, as it will follow.

If it is said: Is this question /1:79/ subject to *ijtihâd* or is it decisive?

We shall say: It is decisive. Only one [answer] hits the truth concerning it because he who holds this to be correct relies on *ijmâ'*, which is decisive. Yet those who void it, they rely on the contrariety between seeking *nearness* and [engaging in] *disobedience*, claiming that it is impossible [to combine them] on the basis of rational proof. Therefore, the question is decisive.

If it is said: You have cited *ijmâ'* concerning this question, while Ahmad b. Hanbal has held this prayer to be void and the invalidation of any prohibited contract, even sales at the time of calling for the [congregational] prayer on Friday. Therefore, how could you argue on the basis of *ijmâ'* against him?

We shall say: *Ijmâ'* is a valid proof against him since we know that the transgressors were not commanded to repeat [their] prayers despite the numerousness of their occurrence. At the same time, if they had been commanded to do this, it would have been well known. And if he [b. Hanbal] denied this, he would be compelled [to accept] what is more evident than his [denial], namely that a woman will not be lawful for her husband while he is liable to a *dâniq*[12] which he took unjustly. Nor will his sale, prayer, or conduct be adequate, leading to the position of most women being prohibited [from him] and the relinquishment of most properties. This is certainly a violation of the *ijmâ'*. So this cannot be allowed.

XIII. DISCUSSION: Just as what is prohibited is in opposition to what is obligated, the reprehensible is in opposition to the obligated. Therefore, a reprehensible [act] does not fall under a command such that one and the same thing becomes commanded and reprehensible—unless [its] reprehensiveness is diverted from the essence of the command to something else, such as the reprehensibility of praying in public washrooms, in a rest area for camels, in the bottom of a valley [in which water may flow], or similar places. For what is reprehensible concerning the bottom of a valley is risking the danger of flood; regarding the public washroom, it is exposure to slime or to Satan's overcoming [of a

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[12] '*Dâniq*' is a silver coin which, according to Qal'ajî, *Mu'jam Lughat al-Fuqahâ'*, p. 206, has the weight of value of 0.496 grains.

person]; and concerning the camel's rest area, it is due to being in risk of their stampede. All of this would occupy the heart during the prayer and may disturb submissiveness in a manner that does not demonstrate the diversion of the prohibition from that which is prohibited to that which resides near it and accompanies it due to its [the bidding's] being outside of its [the prohibition's] essence, conditions, and constituents.

Therefore, command and prohibition cannot be combined, for His statement, وليطوفوا, *"Let them . . . go about the Ancient House,"*[13] does not include the circumambulation of the *muhdith*,[14] who has been prohibited from it, for that which is prohibited cannot be commanded. Likewise, what has been prohibited in the question of praying in a usurped home is separated from what is commanded, since the subject of command is prayer and the subject of prohibition is usurpation. Yet it is in its vicinity.

XIV. DISCUSSION: According to those agreeing on the rectitude of the prayer in the usurped home, prohibition is divisible into that which returns to the essence of what is prohibited—thus contradicting its obligatoriness; to that which returns to other than its [essence], whereas it does not contradict its obligatoriness; and to that which reverts to a character of the

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[13]Qur'ân, 22:29.

[14]'*Muhdith*' refers to a person who either does not have ablution or has engaged in sexual intercourse. For more details, see Qal'ajî, *Mu'jam Lughat al-Fuqahâ'*, p. 410.

prohibited, not to its essence.

However, they have differed with regard to this third category. The example of the first two categories is evident.

An example of the third [category] would be obliging circumambulation but prohibiting its occurrence together with *hadath*, or commanding fasting yet prohibiting its occurrence on the Day of Sacrifice. So it is said that fasting, insofar as being lawful, is bade, and insofar as occurring in this particular day, it is unlawful. Also, circumambulation is lawful on the basis of His statement, ﻭﻟﻴﻄﻮﻓﻮﺍ, *"Let them . . . go about the Ancient House,"*[15] but its occurrence in the state of *hadath* is prohibited. Or trafficking, /1:80/ insofar as being a sales transaction, is lawful. But insofar as its occurrence in association with an invalid condition or additional compensation with regard to usurious deals, it is prohibited. Divorce, insofar as being divorce, is lawful. But with respect to its occurrence during menstruation, it is prohibited. Conceiving a baby is lawful, insofar as being of lawful intercourse. But with respect to its occurrence with other than the lawful wife, it is prohibited. A journey, insofar as being travel, is lawful. But the fleeing of a slave from his master is unlawful.

Therefore, Abû Hanîfa made this a third category, claiming that this necessitates the invalidation [*fasâd*] of the attribute, not the denial of the principle, for [prohibition] reverts to the attribution, not to the principle. But al-Shâfi'î, رحمه الله, joined this with the prohibition of the principle and did not make it a third

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[15]Qur'ân, 22:29.

category. So if [for example] divorce is carried out in the menstrual period, he applies prohibition, not to the principle and its attributes, but to the extension of the *'idda* period, or [his] following regret upon doubting [the conception of] a baby.

Abû Hanîfa, voiding the prayer of the *muhdith*, but not his circumambulation, claims that the *Sharî'a* proof has indicated that ritual purity [*tahâra*] is conditional concerning prayer. For he has said, [illegible], "There is no [valid] prayer without ritual purity." Therefore, it is invalidation of the prayer, not a prohibition [against it].

But there are two considerations regarding this question. The **first** of which is related to what the unqualified prohibition necessitates with respect to the expression. This is an examination in the requirement of the mood, which is a linguistic topic. We will mention it in the chapter of *al-Awâmir wa al-Nawâhî.*[16]

The **second** consideration examines the contradiction between these attributes, and whether their composition is conceivable or inconceivable in the case of being explicitly determined by a proponent. Namely, is it conceivable for a master to say to his slave, "I command you to sew, and I forbid you from it"? There is no doubt that this is inconceivable for him because one and the same thing is bade and prohibited. But it is conceivable on his part to say, "I bid you to sew, and I forbid you from entering this home and being in it," without his mentioning *sewing* in [his] prohibition. This is conceivable. Yet if he [the slave]

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[16]See Ghazâlî's treatment in *al-Mustasfâ*, 1:411 and 2:34.

sewed in that home, he would be both doing his [master's] bidding and [violating] his prohibition.

Moreover, is it possible for [the master] to say, "I bid you to sew, and I forbid you from doing it at noon time." Then if he sews at noon time, is he joining that which is forbidden with what is bade? Or did he not fulfill what has been bade? These are open questions.

What is the more appropriate [opinion] is that he did not fulfill what has been bade. What has been prohibited is this sewing which took place at noon time, not just its mere occurrence at noon time, despite the continuance of sewing being bade, since occurring in time is not something separate from that which is occurring.

If it is said: Why then does prayer become valid during the reprehensible times? Furthermore, why are prayers occurring in the [previous] seven places, such as the bottom of a valley, the rest area for camels, and so on, valid? Moreover, what is the difference between these and the prohibition of fasting on the Day of Sacrifice?

We shall say: Whosoever validates these prayers is obliged to divert the prohibition from the principle of prayer and its characters to something else. But they [the *fuqahâ'*] have disputed concerning the constitution of prayer during the prohibited times because of their indecisiveness concerning prohibition. That is, whether it prohibits from performing the prayer /1:81/ insofar as it occurs as a prayer, or on the basis of something else associated

with it.

As for fasting on the day of sacrifice, al-Shâfi'î, رحمه الله, decisively holds its invalidity because diverting prohibition from its essence and characteristics is not evident [to him]. Nor does he accept their statement that it is prohibited because it has therein abandonment of answering the call to eat, for eating is contrary to fasting. Therefore, how could it be said to one, "Eat!" meaning, "Answer the call!" and then again, "Do not eat!" meaning "Fast!"

Now, elaborate exposition of these questions is not incumbent upon the [*uṣûlî*] jurist. Rather, it is left to the *mujtahid's* inquiry concerning the details of *fiqh*. An *uṣûlî* is only [expected] to exhaustively list these three categories and explain their position concerning mutual opposition or its absence.

As for considering the individual questions, and to which category they belong, this is for the *mujtahid*. He may know this through a decisive proof or he may know it by conjecture. But none of this is incumbent upon an *uṣûlî*.

The completion of the inquiry with respect to this [issue] is [acquirable] through elucidating to which of these categories the unqualified prohibition belongs, [whether] the [act] is prohibited in itself, for things other than itself, or for its characteristics. This will follow.

XV. DISCUSSION: They have disputed about whether commanding something is prohibiting its opposite. This question has two aspects:

One of them is related to the [linguistic] mood [*ṣîgha*]. But

this is not acceptable to those who do not consider command as having a mood. As for those who do accept this, there is no doubt, then, that one's statement "Stand!" is different than his statement "Do not sit!" For they are two different forms. Therefore, they must refer to the meaning, namely that his statement, "Stand!" has two meanings. One of them is *bidding standing*, and the other is *abandoning sitting*. Therefore, it indicates the two meanings. Yet the two implied meanings are either united or one of them is different than the other. So one must refer to what is intended.

The second aspect is inquiring about the meaning inherent in the mind, namely whether bidding standing is identical to bidding abandoning sitting. But this cannot be assumed with respect to Allâh, تعالى, because His speech is one, namely command, prohibition, promise, or warning. Nor is it liable to *otherness*. Nevertheless, it is conceivable with a creature, namely in his bidding of action. [But] is it in itself prohibiting idleness and bidding its abandonment?

The Mu'tazilites have stated that commanding something is not prohibiting its opposite. Al-Qâḏî Abû Bakr, رحمه الله, has argued against them by saying that one who commands something is prohibiting its opposite. Therefore, if there is no proof establishing the attachment of something else with his command, it indicates that he is prohibiting [the opposite] by that which he is commanding.

He says that based on this we know that idleness is identical to abandoning action, and bidding idleness is identical to bidding the abandonment of action. Also, the occupation of a substance in a

sphere to which it was transferred is identical to its evacuation from the sphere from where it was translocated. Again, nearness to the West is identical to remoteness from the East. It is, therefore, one action. But in relation to the East, it is remoteness and, in relation to the West, nearness. Also, it is one existence. But in relation to a sphere, it is occupancy and, in relation to the other, vacancy. Similarly, there is one bidding here. But in relation to idleness, it is a command and, in relation to action, a prohibition.

He [further] said that the proof that [bidding] does not have other things with it is that the other would be either opposite of it, similar to it, or different. Its being opposite is impossible because they cannot be joined. Yet they have come together. Still, it is impossible for them to be similar because of their mutual contrast. But it is impossible /1:82/ for them to be different, for were it so, it would be possible for one of them to exist without the other—either *this* to the exclusion of *that* or *that* to the exclusion of *this*, such as willing something while knowing it because of the difference concerning the conceivability of the existence of knowledge [*'ilm*] to the exclusion of will [*irâda*] even though the existence of will without knowledge is inconceivable. Rather, it is possible to conceive of its existence together with the opposite of the other. The opposite of prohibiting an act is commanding it. Therefore, we should consider it possible that one may command both idleness and action. So he may say, "Act and remain still!" or "Stand and sit!"

Now, what [al-Qâḏî] has mentioned is a proof against the Mu'tazilites because they have denied obliging the impossible.

Otherwise, whosoever considers it possible permits saying "Combine standing and sitting!"

Moreover, we do not concede that everyone commanding something is necessarily prohibiting its opposite. Rather, it is possible that one may be commanding its opposite, let alone being neither commanding or prohibiting.

In sum, what has been proven correct according to us based on theological investigation stemming from the establishment of the speech inherent in the mind is that commanding something is not a prohibition from its opposite, not in the sense that they are identically the same, nor in the sense that it includes it, nor in the sense that it necessarily follows it. Rather, it is conceivable that one may command something while being heedless of its opposite. So, how could a statement relating to what he is heedless of be inherently established in him?

Similarly, one may forbid something while its opposite does not occur in his mind until he commands *one* of its opposites [in general], not a particular one. Therefore, if he commands without being heedless of the opposites of the command, then self-reproving does not intentionally prevent a person from the opposites [of the command], except insofar as he knows that it is not possible to fulfill the command without abandoning its opposites. Therefore, abandoning the opposites of a command becomes a means [of fulfilling it] due to the necessity of existence, not because of its correlation with bidding. Even if one imagines the joining of standing and sitting, despite the impossibility, so that when it is said to him, "Stand!" he combines [the two], he then

would be complying because he was ordered only to perform standing, which he did. But whosoever holds this position, necessarily bears the scandals of the Mu'tazilite al-Ka'bî, since he denied the permissible [*al-mubâh*], saying that there is not a permissible [act] except that it is an abandonment of a prohibition. Hence, it is an obligation. Yet then he is forced to characterize [performing] prayer as being prohibited when because of it one abandons the immediate obligatory *zakât*.

If one were to distinguish [them] by saying that prohibiting *is not* commanding the opposite while commanding *is* prohibiting the opposite, then he would have no way [to prove it] except through sheer arbitrariness.

If it is said: You have stated that that without which an obligation cannot be achieved is therefore an obligation and that one cannot achieve the performance of something except by abandoning its opposite. So it must therefore be necessary.

We shall say: Similarly, it is necessary. But the dispute is only in regard to its obligatoriness, as to whether it is identical to obliging what is commanded or something else. So when it is said, "Wash the face!" the essence of this is not obliging the washing of part of the head. Likewise, His statement, "*Fast during the day . . .*" is not in itself obliging abstention [from food, etc.] during part of the night. Therefore, one is obliged to have intention only to fast during the day. But this becomes mandatory on the basis of the indication of the rational proof insofar as it is a means to what is commanded, not for its being identical with this obligation.

Therefore, there is no contradiction between the two statements.

THE THIRD ASPECT

CONSTITUENTS OF RULES

They are four: *AL-HĀKIM* [THE RULER]; *AL-MAHKŪM 'ALAYHI* [THE LOCUS OF OBLIGATION]; *AL-MAHKŪM FĪHI* [THE SUBJECT OF RULE, ACTS]; AND *NAFS AL-HUKM* [THE RULE ITSELF]

Concerning rule [*hukm*] itself, we have discussed it [previously], namely that it is related to the [*Sharî'a*] address, which is the first constituent.[1]

THE SECOND CONSTITUENT: THE RULER [*AL-HĀKIM*]

He is the addresser, for the rule is address and speech. Its agent is every speaker. Therefore, the existence of the rule's form does not require more than this measure.

As for meriting the enforcement of the rule, this is for none save He to whom belongs the creation and the command. For the effective enforcement is the rule of the owner over his possessions, and there is no owner save the Creator. Thus, there is neither rule nor command save which belong to Him.

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[1] It should be noted that since Ghazâlî opened the First *Qutb* by discussions concerning the nature of *hukm*, he starts here by discussing the second constituent, which he lists first, *al-Hâkim* [the Ruler].

As for the Prophet, صلى الله عليه وسلم, the sultan, the master, the father, and the husband, when they command and oblige, nothing becomes obligated on the basis of their mandating. Rather, it is on the basis of Allâh, تعالى, obliging obedience to them. If it were not for this, the situation would be, with every creature obliging something upon others, that the one subjected to obligation could turn the obligation upon the former, since one of them is not worthier than the other. What is obligated, then, is obeying Allâh, تعالى, and obeying those to whom He obliged obedience.

If it is said: This is not so, but whosoever is capable of threatening and realizing *sensible* punishment, he is, then, capable of obliging, since obligation is only realized by punishment.

We shall say: We have mentioned the position of al-Qâdî, رحمه الله, that if Allâh, تعالى, obliges something, it would be obligated, even though he does not threaten punishment for it. But upon investigating the essence of obligation, this amounts to nothing if a feared harm is not associated with it. Also, if it is in this world, one may be capable of it, except that the norm specifies this term '*darar*' by the *harm* which is feared in the Hereafter—none is capable of this, save Allâh, تعالى. Therefore, if it is used for every feared harm, even though it is in this world—so that a human being is capable of it—then, it is possible for it to be obliging, not in the sense that we are certain of one's capability of it, for he may fall short of it before realizing the threat. But we anticipate his capability, which yields a sort of fear.

THE THIRD CONSTITUENT: THE LOCUS OF OBLIGATION [*AL-MAHKŪM 'ALAYHI*]

He is the locus of obligation. His qualifications [*shurût*] are that he be sane and comprehending of the address. Therefore, addressing inanimate beings and beasts is not valid—and such is the case in addressing the insane and the minor who cannot discern [right from wrong], for *taklîf* [laying an obligation] requires obedience and compliance. This is not possible except by intending to comply, while the condition for intending [to comply] is knowing what is intended and the comprehending of *taklîf.* For every address implies a command to understand. For whosoever cannot understand, how can it be said to him, "Comprehend!" Also whatever cannot hear sound, such as inanimate things, how can it be addressed? Even if [something] is able to hear sound but does not comprehend, as in the case of a beast, it is similar to that which cannot hear. Furthermore, [as for] one who hears and may understand to some degree, but does not comprehend or sustain [knowledge]—such as insane or undiscerning persons—requiring compliance of him is imposssible, even though addressing him *is* possible, aside from the fact that a valid intention from him is inadmissible.

If it is said: *Zakât*, compensation, and maintenance is obligated for minors.

We shall say: This has nothing to do with *taklîf,* since laying obligation is impossible upon the acts of others. Blood money is

obligated upon the male blood relatives [*'aqilah*],[2] not in the sense that /1:84/ they are obligated to do other's acts, but in the sense that the acts' of others are the cause for establishing liability on their part. Similarly, this is the case regarding damage [to others' property and self]. Moreover, possessing the minimum amount of assets is a cause for establishing these rights upon minors, namely that it is the cause for addressing the guardian with immediate performance and the cause for addressing the minor after coming of age. This is not impossible.

What is impossible, however, is to say to whosoever cannot understand, "Comprehend!" and to address that which neither hears nor comprehends.

As for the capacity for rules to be established upon individuals, it is derived from the *humanness* that enables [a person] to possess the power of reason, through which one [is able to] understand *taklîf* in the second stage.[3] But since a beast does not have the capacity to comprehend address, neither actually or potentially, it is not prepared, then, to be charged with rules.

A condition, however, must be either existing or soon-to-be possible. Thus it can be said that it potentially exists, such as the condition for ownership being *humanness*, and the condition for *humanness* being life. Yet ownership may be established for an embryo in the womb by way of inheritance or will, while [full

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[2] See Qal'ajî, *Mu'jam Lughat al-Fuqahâ'*, p. 301.

[3] Ghazâlî is most likely referring to a minor's coming of age.

human] life does not exist actually, but potentially, since it culminates in life. Such is the case with a minor; he becomes rational. Therefore, he becomes eligible for laying obligation upon his person. But he is not immediately [as a minor] eligible for *taklîf*.

If it is said: A discerning minor is commanded to pray.

We shall say: He is commanded through the guardian; and the guardian is commanded from Allâh, تَعَالَى, since he, صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ, said, "Instruct them to pray when they are seven [years of age], and hit them [for negligence] when they are children of ten."[4] This is because they understand the address of the guardian and fear his hitting. Thus, they become eligible for [prayer], though they do not comprehend the address of the Lawgiver, nor do they fear his punishment, since they do not comprehend the Hereafter.

If it is said: When one approaches puberty, the *Sharî'a* does not lay obligation upon him. Does this indicate deficiency in his mind?

We shall say: Al-Qâḏî Abû Bakr, رَحِمَهُ اللهُ, said that it does indicate this. But this is inadequate, for [the ability to] discharge semen on his part does not increase his rationality. But the address [of obligation] was removed from him for relief because his reason is hidden—and it becomes evident in him gradually. So, one cannot suddenly recognize the measure [of reason] through which he

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[4]Wensinck, *Concordance*, p. 505.

understands the *Sharî'a* address and knows of the Addressor, the Messenger, and the Hereafter. Therefore, the *Sharî'a* has raised for it [puberty] a demonstrative sign.

I. DISCUSSION: Laying an obligation on a forgetful person or one who is unaware of what is laid upon him is impossible. For he who does not comprehend, how can it be said to him, "Understand!"

As for the establishment of rules based on his acts [performed] during sleep or heedlessness, it is not denied, namely being liable to penalties and other things. Similarly, charging an intoxicated person who does not comprehend is impossible, as in the case of laying an obligation upon on the unmindful, the insane, or he who hears but does not understand. Indeed, the situation of the intoxicated person is worse than one who is sleeping—for waking him is possible—and the insane who does not understand much of speech.

As for the enforcement of his divorce [statement] or mandating penalty [upon him], this is through relating the rules to their causes, and this is not deniable.

If it is said: Allâh, تعالى, has stated, "*Do not approach prayer while you are intoxicated,*" and this is an Address for the intoxicated.

We shall say: If addressing him has been established by a demonstrative proof, it becomes mandatory to interpret the verse [differently]. It has two interpretations: One of them is that it is an

address to one who is in the early stage of intoxication, when the beginnings of merriness and rapture become evident in him. Still, his mind is not yet lost, /1:85/ for he may enjoy in playfulness and becoming happy that which he may not like prior [to drinking]. The meaning of His statement, تعالى, "*. . . until you know what you say*," becomes, ". . . until you are able to discern and your sobriety is completely [restored]," just as it is said to an angry [person], "Be patient until you know what you are saying," meaning, "until your anger subsides so that your awareness becomes complete," even though, in principle, his mind remains [active]. This is because such an intoxicated person should not engage in prayer, while uttering the sounds of the letters is difficult for him, as is attaining humility.

The **second** [interpretation] is that this address was revealed in the early stages of Islam before the prohibition of alcohol and what was meant is not preventing the prayer, but preventing excessive drinking at the time of prayer, such as saying, "Do not engage in *tahajjud* [praying late at night] while you have a full stomach," meaning do not fill [your stomach] so that *tahajjud* becomes burdensome upon you.

II. DISCUSSION: If one were to say that, according to you, command does not require that the commanded be existent. For you have determined that Allâh, تعالى, is commanding his servants in eternity before their creation. So, how could you require that the locus of obligation be hearing and sane, while the intoxicated, the oblivious, and the insane are closer to *taklîf* than the nonexistent?

We shall say: It is necessary to understand the meaning of our statement, "Allâh, ﷻ, is commanding . . . and the nonexistent is commanded." For we mean by this that he is commanded upon his existence, not that he is commanded in the state of nonexistence—for this is impossible.

However, those who assert that speech inheres in the mind have demonstrated that it is not unlikely that bidding the ascertaining of knowledge could exist in the mind of a father concerning a son who *will* exist. Therefore, if this bidding were to continue until the son comes to be, he would be liable to this bidding and commanded thereby. Similarly, the meaning inherent in the mind of Allâh, ﷻ, which requires obedience from people, is eternal and relates to his servants upon their existence. So when they exist, they become commanded with this requirement. The same applies to the minor and the insane because awaiting sanity is no different than awaiting existence.

Yet this meaning is not called, in eternity, an address, and only becomes an address when the commanded exists and is made to hear. Whether it should be termed *'amr'* [command] or not, there is a dispute concerning this. But properly speaking, it is so termed because it is appropriate to say, with regard to a person who charged his children to give his wealth in charity, "So and so has commanded his children with such and such," even though one of his children is hidden in the womb, or nonexistent. But it is not appropriate to say, "He addressed his children," except if they were present and heard. Then if he charges them and they execute his will, it is said, "They have obeyed his command," although the

commander is now nonexistent and the commanded was nonexistent at the time of the commander's existence.

Similarly, we now, because of our obedience, are complying with the command of the Messenger of Allâh, صلى الله عليه وسلم, while he is nonexistent in our immediate realm, even though he is alive with Allâh, تعالى. Therefore, if the existence of the commander is not conditional for the commanded to be obedient and complying, the existence of the commanded is not required because a command is a command.

If it said: Would you say that Allâh, تعالى, in eternity is commanding the nonexistent in a mandatory way?

We shall say: Yes. We state He is commanding, but pending on existence, just as it is said a father mandates and obliges upon his children to give charity when they become mature and reach puberty. Mandating and obliging, then, /1:86/ accrue but conditional on the existence and ability [of the children]. If one were to say to his slave, "Fast tomorrow!" he would, at once, be mandating and obliging the fasting of tomorrow. Yet fasting tomorrow is not possible at the time [of the command]. Rather, [it is possible] tomorrow. But it is qualified as being mandating and obliging immediately.

THE FOURTH CONSTITUENT: THE SUBJECT OF RULE [*AL-MAHKŪM FĪHI*]

This is the [human] act because nothing except volitional acts enter under *taklîf*. For those [acts] coming under *taklîf* there are

conditions.

The first is the rectitude of its origination because of the impossibility of associating the command with the eternal and everlasting, or to denature genera [into a different form], or to combine contradictions, or other such absurdities with which *taklîf* cannot be laid, according to those holding it impossible to lay an obligation which is not bearable. Therefore, there is no command of a nonexistent [thing] except when its existence is possible. But they have disputed regarding what is originated in the initial state of its origination, as to whether it is commanded in the way it was before origination or removed from being commanded, such as the case in the second stage of existence. This, however, is a theological [*kalâmî*] discussion whose mention is inconsistent with the aims of the principles of jurisprudence [*usûl al-fiqh*].

The second is the possibility of it being attainable by man, occurring by his own volition, since charging Zayd with the writing or the sewing meant for 'Amr is not possible, even though its existence is possible. Therefore, along with being possible [to exist], it must be attainable by the addressee.

The third is that it be known to the commanded and distinguished from other [commands], so that one's proceeding with it is conceivable. Moreover, it should be known that it is commanded by Allâh, تعالى, so it becomes conceivable on one's part to comply; but this is restricted to [rites of worship], where intention of obeying and seeking nearness [to Allâh] is necessary.

If it is said: An unbeliever is commanded to believe in the

Messenger, صلى الله عليه وسلم, yet he does not know that he is commanded with this.

We shall say: A condition must be known or considered known, such that knowing it is possible, in the sense that proofs are being established and reason and the power of thinking are existent. So it is not valid where there is no proof or with regard to one without [sound] reason, such as a minor or an insane person.

The fourth is that it [the act] must exist, whereby willing its performance as obedience is valid, which is the case with most of the rites of worship. However, two things are excluded.

One of them is the primary obligation, namely the thinking that identifies obligatoriness. For intention to perform it as obedience is not possible when a person does not know its obligatoriness until after its performance. The second is the essence of intending obedience and devotion. For if an act were to lack intention, the intention would lack intention, thus leading to a vicious circle.

Now, five discussions issue from the conditions of acts.

I. DISCUSSION: Some people have held that the subject of *taklîf* may exist unconditionally. Indeed, it is possible to charge [one] with what is not bearable, command combining contradictions, denature genera, abolish that which is eternal, and create that which is existent. This is attributed to Shaykh Abû al-Hasan al-Ash'arî, and necessarily follows his position in two ways.

The first of them is that a person who is sitting, according to him, is not able to stand for prayer because ability, in his view,

becomes [available] during the act, not before it, while one is commanded before it [the act]. The **second** is that originated power has no effect in bringing that which is possible into being. Rather, our acts are originated by the power of Allâh, تعالى, and His creation. Therefore, every person, in his view, is commanded by the doings of others. He [Ash'arî] has supported /1:87/ this by three things.

The **first** of them is His statement, تعالى, ". . . '*And do not burden us beyond what we have the strength to bear.*'"[5] Yet one does not seek the removal of what is impossible, for it is removed by its very nature.

But this is weak. For what is meant is what is difficult and burdensome for us, since one may be burdened with the charge of acts leading to near destruction due to their severity, such as His statement, ". . . '*Slay yourselves*' or '*leave your habitations*' . . . ,"[6] [For] it may be said with respect to him that he has been burdened with what is beyond his ability. But the apparent, interpreted [meaning] is weak in indicating decisive [issues].

The **second** is their statement that Allâh, تعالى, has informed that Abû Jahl will not believe. Still, He charged him with belief—namely to attest to Muhammad in what he has brought—while in what he has brought is that he [Abû Jahl] will not attest to him. [It is] as if He has commanded him [Abû Jahl] to

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[5]Qur'ân, 2:286.

[6]Qur'ân, 4:66.

attest to [the Prophet] that he [Abû Jahl] will not attest to him. This is absurd.

But this is also weak. For Abû Jahl was commanded by faith, oneness [of Allâh], and the message, while the proofs are demonstrated and reason is present, since he was not insane. Therefore, the possibility existed. But Allâh, تعالى, knew that he [Abû Jahl] would abandon what is attainable by him out of envy and obstinacy. For knowledge follows that which is known but it does not change it.

So, if it is known that something is performable by a person and possible for him, but is abandoned on his part despite [his] power over it and then it becomes impossible, then knowledge would become ignorance and no longer possible or attainable. Similarly, we say that the Resurrection is within the power of Allâh, تعالى, at this moment, even though He informed that He will not establish it and will set it aside despite having power over it. Yet contradicting His information is absurd because His threat then becomes false. But this impossibility does not reflect on the thing itself; consequently, it does not effect it.

The **third** is their statement that if it is impossible to lay an impossible obligation, then it would not be possible owing to its linguistic mode or meaning, or the harm associated with it, or its contradiction of conventional wisdom.

However, it is not impossible due to its linguistic mode because it is possible for Him to say, ". . . *Be you apes, miserably*

slinking!"[7] or for a master to say to his blind slave, "Look!" or to the paralyzed, "Go!" As for the establishment of its meaning independently, it is also not impossible For it is possible for one to ask his slave to be at one state in two places in order to protect his businesses in two cities. But, it is impossible to say that it is not possible because of corruption or contradiction of conventional wisdom. For establishing things on this basis with regard to Allâh, تعالى, is absurd, since nothing of Him is bad and [doing] what is best is not incumbent upon Him. Also, dispute is the same either in regard to His [acts] or human ones. Yet corruption or incompetence on the part of humans is possible. Therefore, this is not absolutely impossible.

The preferred opinion is the impossibility of laying an impossible obligation, not because it is bad, nor for a corruption that issues from it, nor due to its linguistic mode—since it is possible for its mode to be rejected—but rather for incapacitation; and not for bidding, as in His statement, ". . . *Let you be stones, or iron,*"[8] [or] as in His saying, ". . . *Be you apes, miserably slinking!*"[9] nor to demonstrate power, such as His statement, تعالى, ". . . *'Be!' and it is.*"[10]—not in the sense that He has bid the nonexistent to *be* by

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[7]Qur'ân, 2:65; 7:166.

[8]Qur'ân, 17:50.

[9]Qur'ân, 2:65; 7:166.

[10]Qur'ân, 40:68.

itself. But it is impossible for its meaning, for the definition of '*taklîf* ' is bidding what is burdensome, and bidding requires a bade object. And this bade object must, in all opinions, be understood by the locus of obligation. Therefore, it is possible to say "*Taharrak*! [Move!]" since *moving* is understood. Yet if one were to say, "*Tamarrak*!"[11] this is not a responsibility because its meaning is neither intelligible or understood, nor has it any meaning in itself, for it is an unconsidered word.

Even if it were to have /1:88/ meaning in some languages known to the commander, [but] not the commanded, this also would not be *taklîf*. For *taklîf* is addressing [one] with something that is burdensome. So, that which is not understood by the addressee is not an address to him. It is required [for the address] to be understood only to conceive obedience on the part of [the addressee], for *taklîf* requires obedience.

Accordingly, if it is not comprehended in the mind, requiring obedience will neither be conceivable nor intelligible, since it is impossible to establish in the mind of the sane, [say], bidding tailoring from trees because bidding first calls for an intelligibly bade object—and this is unintelligible; that is, it cannot exist in the mind. For a thing, before it exists in itself, has an existence in the mind. Furthermore, bidding it can only occur after it accrues in the mind, and the origination of the eternal does not inhere in the

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[11]Ghazâlî created '*tamarrak*,' which has no meaning, after the pattern of '*ta<u>h</u>arrak* ' by changing the '*<u>h</u>â*' ' to '*mîm* ' to illustrate his point.

mind. So how could bidding the origination of the eternal be established per se? Again such is the case with the "blackness of the white"—it does not exist in the mind—and with the "standing of the sitting." For how can one say to another, "Stand while you are sitting!"

Therefore, this bidding, because of the nonexistence of the bade object, is impossible to inhere in the mind. For as it is required with respect to the bade object to be nonexistent in reality, it is required [of it] to exist in the intellect, that is, in the mind, in order that presenting it in reality be in accordance with that which is in the mind. Therefore, it becomes obedience and compliance, namely following the model which is in the mind of the bidder. Thus, that which has no model in the mind has no image in reality.

We shall say: This is a bidding based on ignorance. But an ignorant person may think that this is *taklîf*. Yet when it is manifested, it becomes clear that it was not bidding, and this is inconceivable from Allâh, تعالى.

If it is said: If the originated power, while being in the act, does not effect performance, every *taklîf*, then, would be obligating that which is unbearable.

We shall say: We know necessarily the distinction between saying to one sitting, who is not paralyzed, "Enter the house!" and saying to him, "Climb to the heavens!" or saying to a person, "Stand while remaining sitting!" or, "Change blackness into motion and a tree into a horse!" Nevertheless, examination of this distinction

should clarify from whence it originates. It is known that it is related to an ability and a power in relation to one of these commands to the exclusion of the rest. Then looking into the details of the power's effect at the time of the origination of the power—in whatever way it has been established—should not cause us to doubt this. That is why it is possible for us to say, ". . . *And do not burden us beyond what we have the strength to bear.*"[12] Thus, if all matters equiponderate, what is the sense of this supplication? And what is the sense for this necessary distinction? Our objective in this discussion, however, does not depend on inquiring into the manner of the power's effect and its time.

In sum, the reason for this obscurity is that *taklîf* is a special type of speech inherent in the mind, and there is difficulty in understanding the principle of speech inherent in the mind. Therefore, building details upon it and dividing its category would necessarily be even more obscure.

II. DISCUSSION: Just as it is impossible to say, "Combine motion and idleness!" it is impossible to say, "Do not move and do not remain still!" For refraining from both of them is impossible, as it is impossible to combine both of them.

If it is said: When one is situated in the middle of a usurped farm, /1:89/ so that staying becomes prohibited for him and leaving is also prohibited because with each one there is damaging of the

[12] Qur'ân, 2:286.

crops of others, then he is disobedient in both.

We shall say: The task of an *uṣûlî* here is to know that it should not be said to him, "Neither stay nor go!" Furthermore, he cannot be prohibited from the two contraries, for it is absurd and he is not commanded to combine both of them.

If it is said: What should be said to him?

We shall say: He is to be commanded to exit, just as a person inserting [his penis] into a forbidden vaginal orifice is commanded to withdraw, even though [in doing so] he will be touching the forbidden vaginal orifice. It is said to him, "Withdraw with the intention to repent, not with the intent of pleasure." Similarly, in exiting from the usurped [farm], there is a minimization of harm, while staying increases it. The lesser of the two harms becomes obligatory and obedience in relation to the graver of the two—just as drinking alcohol becomes an obligation [when no other fluid is available] on the part of one choking on a bite [of food]. Similarly, eating the food of others becomes incumbent upon a person compelled by starvation and damaging the property of others is not prohibited per se. This is why if one is threatened with death to do it, it becomes obligatory or permissible.

If it is said: Why then is liability required for what he damages in exiting [the farm]?

We shall say: Liability does not call for aggressiveness, for it becomes necessary on the compelled—even in starvation—despite mandating damage. Also, it [liability] is forced upon a minor or

whoever shoots into the ranks of the unbelievers,[13] even though he is being obedient through it.

If it is said: If proceeding with an invalidated *hajj* is prohibited due to the necessity of *qadâ'* [restitution], it is not, then, obligated. But if it is obligatory and binding, why then is *qadâ'* obligated? And why would one be disobeying because of it?

We shall say: He disobeys by [for example] the invalidating sexual intercourse but is obedient by the completion of the invalid [*hajj*]. *Qadâ'* is required by a renewed command or may be required by that which is obedience if deficiencies infringe upon it. Also, *qadâ'* is omitted by praying in the usurped home despite it being an offense, for *qadâ'* is similar to liability.

If it is said: On what basis do you object to Abû Hâshim [al-Jubbâ'î] for holding that if such a person stays, he would be disobeying and if he exists, he would be disobeying? For he has thrown himself into this dilemma; therefore, his action is characterized as disobedience.

We shall say: No one is allowed to throw himself into a situation of undertaking what is impossible. Therefore, whosoever throws himself from a roof, thus breaking his leg, would not be disobeying for praying while sitting. Rather, he disobeys by breaking his leg, not by abandoning prayer in the standing position.

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[13]Ghazâlî is referring to the accidental killing of a Muslim while aiming into the ranks of the enemy.

And if by stating that such [an act] is characterized as an offense, one intends to mean only that he was prohibited from it along with being prohibited from its opposite, then this is absurd. Disobedience expresses the perpetration of a prohibition that has been forbidden. Therefore, if there is no prohibition, there is no disobedience. How could a prohibition from something and from its opposite as well be obligated? Thus whosoever rationally permits the laying of an unbearable obligation prevents its [occurrence] in the *Sharî'a* because of His statement, تعالى, "Allâh charges no soul except by its capacity."[14]

If it is said: If you make preponderant the side of exiting for minimizing harm, what do you say, then, concerning a person who has fallen on the chest of child who is surrounded by other children—knowing that if he stays he will kill [the child] beneath him and that if he moves he will kill those around him—and there is no given preference? What then is the solution?

We shall say: It is possible to tell him, "Stay!" because moving is an initiated act which is not valid except from a living and able [person]. As for abandoning motion, it does not employ /1:90/ power. It is possible to say, since there is no given preference, that he may choose. Also, it is possible to say that Allâh, تعالى, does not have a judgment with regard to it. Therefore, he does what he wills because a rule cannot be established except on the basis of a text [*nass*] or analogical reasoning based on a text

[14]Qur'ân, 2:286.

[*qiyâs 'alā mansûs*]. But there is no text concerning this question nor has it a parallel in the texts with which it can be analogized. Thus, he remains as in the state prior to the arrival of the *Sharî'a*. Nor is it unlikely for a case to be uncharacterized [by the *Sharî'a*]. All of this is possible. However, charging an impossible obligation is impossible.

III. DISCUSSION: They have differed with regard to that which is required by *taklîf*.

The opinion of most theologians is that what is required is proceeding or refraining, and each is attainable by man. Therefore, commanding fasting is a command to refrain; and refraining is an act for which one is rewarded. Furthermore, what is required in the prohibition of fornication and drinking [alcohol] is involvement with one of its opposites, which is abstention. Therefore, one is rewarded for abstaining, which is his act.

Some Mu'tazilites said that one may be required to refrain. Thus, it becomes like an act. Or he may be required not to act but not intend to involve with its opposite.

The above opponents, however, denied this and stated that whoever stops or refrains because of prohibition is rewarded; and he will not be rewarded except for something, while not acting is nonexistence and not a 'thing.' Furthermore, power does not adhere to it, since power adheres only to something. Therefore, nonexistence cannot be considered a fact of power. Also, if nothing issues from a person, how could he be rewarded for nothing?

The truth of the matter is that command, here, is divisible:

On one hand, refraining while fasting is deliberate. This is why intention is required for it. As for fornication and drinking [alcohol], one is forbidden from doing them. So, those doing [either of] them are punished. But those who do not do them are neither punished nor rewarded, except when one controls his desires for them in spite of being able [to commit them]. He is then rewarded for his act.

As for those who do not commit the prohibited acts, they are not punished for it nor rewarded because nothing has issued from them. Still it is not unlikely that the *Shari'a* intent is that one should not commit obscenities, yet not intending that he involves its opposite.

IV. DISCUSSION: It is possible for the acts of a compelled person [*mukrah*] to be included under *taklîf*, contrary to the acts of an insane person or a beast, for deficiency in this case is in the locus of obligation, not in the subject of *taklîf*. Besides, the conditions for laying an obligation upon a locus of obligation are hearing and comprehension, and this is nonexistent with regard to the insane or a beast. A compelled person, however, does understand, and his act is within the limits of possibility because he is able to either perform it or abandon it. Thus, if he is compelled to kill, it is possible to oblige him to abandon killing, for he is so able, even though it has the risk of [his] destruction. Even if his obligation is consistent with the compulsion, it is also possible, like when one is compelled by sword to kill a serpent heading to kill a Muslim, for it is incumbent to kill it; or when an infidel is

forced to become a Muslim, if he accepts Islam, we say he has fulfilled his obligation.

The Mu'tazilites say that this is absurd, for it is adequate only to do the acts forced upon him until no choice remains for him. But this is false because he is able to abandon them. This is why it is incumbent upon him to abandon that which has been forced upon him when he is compelled to kill a Muslim.

Similarly, if one is compelled to kill a serpent, killing it then would become obligatory. If he is forced to spill alcohol, it becomes incumbent upon him /1:91/ to spill alcohol. This is obvious. However, it has a deeper meaning because compliance becomes obedience only if its origin is based on the incentive of command and obligation, not because of the compulsion; for whosoever proceeded to save himself from the sword of the compeller is not answering the call of the *Sharî'a*. But if one is motivated by the call of the *Sharî'a* in such a way that he would have performed it if it were not for compulsion—indeed, he would perform it even when he is compelled to abandon it—then it is not unlikely for this to be considered obedience. But one is not regarded as being forced, even though the form of the threat is present. One should be attentive to this subtle point.

V. DISCUSSION: The occurrence of the condition of a commanded act is not required at the time of commanding. Rather, the command is issued together with the stipulation and the stipulated act, and [a person] is commanded to start with the stipulation. Therefore, it is possible for the unbelievers to be

addressed by the details of Islam, such as a ritually impure person is addressed to pray with the condition that he first perform ablution, and an atheist [is addressed] to attest to the Messenger with the condition to first believe in the Sender.

The Hanafites have denied this. The dispute concerns either its [rational] possibility or occurrence. As for the rational possibility, it is evident because it is not impossible for the Lawgiver to say, "Islam is based on five [essentials], and you are commanded with all of them or to start with the [declaration of] submission[15] from among them." Thus, faith is commanded in itself and is a condition for all the rites of worship, such is the case with the ritually impure and the atheist.

If someone prohibits everything, saying, "How could one be commanded with that with which it is impossible to comply? Furthermore, the ritually impure is not able to pray because he is commanded with ablution; and upon performing ablution, the command to pray is directed to him."

We shall say: If he were to abandon ablution and prayer all of his life, he would not be punished for neglecting prayer because he was never commanded to pray. But this is contrary to *ijmâ'*. And it necessarily follows that commanding him to pray after ablution is not valid. Indeed, [it is the same with commanding]

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[15]Ghazâlî uses the word *Islam* meaning the declaration that there is no god but Allâh and Muhammad is His Messenger.

takbîr,[16] since commencing with it is required—not even with *takbîr*, it should be the *'hamza'* of *takbîr* first; then the *'kâf'* second, following this sequence. Similarly, the command to proceed to Friday congregation must not issue except for the first step and then the second.

As for occurring in the *Sharî'a*, we shall say it was possible to restrict the address' details to believers, like the obligatoriness of the rites of worship being restricted to the free, the resident, the healthy, and the ritually pure—not those who are in the menstrual period. However, proofs have come addressing them.

There are three proofs for this: First, His statement, تعالى, "*'What thrusted you into Hell-fire.' They shall say, 'We were not of those who prayed . . .'*"[17] So He informed that He punished them for abandoning prayer and cautioned Muslims by it.

If it is said: This is quoting the statement of the unbelievers. Therefore, there is no validity in it.

We shall say: Allâh, تعالى, has mentioned it, according to the consensus of the community, in the context of attesting to them [unbelievers]. Based on it, warning accrues. For if it were false, it

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[16]This refers to saying of *Allâhu Akbar* [Allâh is great] at the commencing of every prayer.

[17]Qur'ân, 74:42-43. Ghazâlî, of course, cited the first verse, but immediately stated "*al-âyah*" assuming the reader's familiarity with the rest of the statement in the Qur'ân, which continues as follows: "*Nor did we feed the needy. And we plunged along with the plungers. And we used to deny the Day of Judgement.*"

would be like their statement, "He punished us because we are created and for being in existence." How could this be, while He has linked to it His statement, ". . . *And we used to deny the Day of Judgment?*" So, how could this be conjoined to that wherein there is no punishment for it?

If it is said: The punishment is for [their] denial; but He solemnly conjoined the abandonment /1:92/ of rites of worship to it.

We shall say: It is not possible to be solemn by abandoning the rites of worship, in the same way that it is not possible to be solemn by abandoning the permissibles [*mubaḫât*], which were not addressed to them.

If it is said: They have been punished, not for abandoning prayer, but for abandoning faith, thereby excluding themselves from learning the evil of abandoning prayer.

We shall say: This is false on a number of grounds. One of them is abandoning the evident meaning without necessity or proof. For abandoning knowledge of the evil of neglecting prayer is different than prayer; for they have said, "*We were not of those who prayed.*"

Second, this necessitates equiponderance between an unbeliever who committed murder, and other prohibitions, and an unbeliever who was confined to disbelief. For both of them are equal in excluding themselves from learning the evil of

prohibitions because of unbelief. Furthermore, equiponderance between them is contrary to *ijmâ'*.

Third, none abandoning either discursive thought or reasoning should be punished for neglecting faith, for by abandoning discursive thought one would then be exempting himself from the capacity of perceiving the necessity of knowing and believing.

If it is said: "*We were not among those who prayed*," means from among the believers; but they have identified themselves by the hallmark of the believers—as he said, صلى الله عَلَيْهِ وَسَلَّم, "I have forbidden the killing of those who pray," namely the believers. But He distinguished them by that which is their mark.

We shall say: This is possible. However, the apparent cannot be abandoned except by a proof; and the opponent has none.

The second proof is his statement, تَعَالَى, "*Those who call not another god with Allâh, nor slay the soul that Allâh has forbidden, except by right, nor fornicate, for whosoever does this shall meet the price of sin—punishment will be doubled for him . . .*"[18] The verse, therefore, is explicit in doubling the punishment of he who combines unbelief, killing, and fornication, like he who combines unbelief, eating, and drinking.

The third proof is that *ijmâ'* has been constituted concerning the punishment of an unbeliever for denying the Messenger as he

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[18] Qur'ân, 25:68-69.

is punished for disbelieving in Allâh, تعالى. This destroys their basis [of argument]. For they said that worship is inconceivable with disbelief; therefore, how can it be commanded?

They argued that there is no sense for obliging *zakât* and the *qaḏâ'* [restitution] of prayer upon him, despite the impossibility of doing it while disbelieving, and despite the omission of mandating his punishment if he were to accept Islâm. Therefore, how could that with which it is impossible to comply be obligated?

We shall say: It is obligated. Even if one were to die disbelieving, he would be punished for abandoning it. But, upon accepting Islâm, his preceding [acts] are pardoned. For Islâm severs what preceded it. And it is not impossible to abrogate a command before having the ability to comply with it. Thus, how could the omission of obligatoriness be impossible by [accepting] Islâm?

If it is said: Since *zakât* is not obligated except with the condition of [accepting] Islâm—while Islâm, which is the condition for obligation, is itself severing [the obligatoriness]—then deducing from this that it is not obligatory is more appropriate than obligating it, and then ruling that it has been severed.

We shall say: There is no absurdity in our statement that obligatoriness has been established by [accepting] Islâm and omitted on the authority of pardoning. So, there is nothing in this that contradicts a text. Rather, passages of the Qur'ân indicate the punishment of an unbeliever who commits obscenities. Similarly,

ijmâ' indicates the distinction between an unbeliever—who killed prophets and *walîs*, and disrupted religion—and an unbeliever who did not commit any of these things. Thus, what we have mentioned is more appropriate.

If it is said: Why then do you oblige *qaḏâ'* for an apostate but not an original unbeliever? /1:93/

We shall say: *Qaḏâ'* has been obligated only on the basis of a renewed command. Therefore, with regard to it, the requirement of the proof should be followed. Yet there is no valid argument in it because *qaḏâ'* is incumbent upon a menstruating woman, although *adâ'* [timely performance] was not obligated upon her. Indeed, one may be commanded by *adâ'*, yet not be commanded with *qaḏâ'*.

The *faqîhs* have argued that an apostate has pledged restitution by [returning to] Islâm, while an unbeliever did not pledge [this]. But this is weak because what Allâh, تعالى, has obliged is obligatory whether a person obliges himself with it or not. Therefore, if it is omitted because of the absence of his pledge, then the original unbeliever—who did not oblige himself with the rites of worship and the abandonment of prohibitions—must not be obliged with this.

THE FOURTH ASPECT

REGARDING THAT WHICH MANIFESTS THE RULE, NAMELY WHAT IS CALLED *SABAB* [REASON] AND THE MODE RELATING RULE TO IT

This has four sections.

SECTION ONE: *ASBĀB* [REASONS]

Know that since it is difficult for people to know the address of Allâh, تعالى, in all conditions—especially after the discontinuance of revelation—Allâh, تعالى, has manifested His address to His creatures by way of certain perceptible things which He established as reasons for His rules and made them necessitating and requiring of the rules, in the same way that a perceptible cause necessitates its effect.

So we mean by '*asbâb*', here, that they are the [reasons] to which the rules refer, such as in His statement[s], تعالى, "*Perform the prayer at the sinking of the sun to the darkening of the night*";[1] "*So let those of you who are present at the Month [of* Ramadân*] fast it*";[2] and his saying, صلى الله عليه وسلم, "Fast for sighting it [the crescent],

[1]Qur'ân, 17:78.

[2]Qur'ân, 2:185.

and break the fast for sighting it."[3]

Now this is evident in what is repeated among the rites of worship, such as prayer, fasting, and *zakât;* for that whereby obligatoriness reoccurs, whenever it [the reason] reoccurs, is, then, rightfully called *sabab* [reason].

But as for that which does not reoccur, such as [accepting] Islam and performing *hajj,* it is possible to say that these are known by His statement, ﷻ, *"It is a duty of all men towards Allâh to come to the House a pilgrim."*[4]

Similar [to this] is the mandatoriness of knowledge on the part of every locus of obligation who knows the fundamentals [of Islam]. Thus, there is no need to relate them to a reason. However, it is possible to say that the reason of the mandatoriness of faith and knowledge are the demonstrated proofs; and the reason for the obligatoriness of *hajj* to the ancient House, other than ability, is that *hajj* is not obligated except one time, since the ancient House is [only] one. Also, since faith is recognition, once it accrues, it continues.

In any case, this matter is simple. This is the category of the rites of worship. As for the category of penalties, atonements, and legal punishments, their reasons should not be difficult to perceive.

Also, the category of human transactions has clear reasons for

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[3]Consult Ismâ'îl al-'Ajlûnî, *Kashf al-Khafâ' wa Muzîd al-'Ilbâs 'ammâ Ashtahar min al-Ahadîth 'alâ Sunnat al-Nâs,* 2 vols. (Beruit: Mu'assat al-Risâla, n.d), 2:42.

[4]Qur'ân, 3:97.

the lawfulness and prohibition of properties and sexual intercourse, such as marriage, trading, divorce and other things. This is evident. The intent is only to demonstrate these reasons as causes for rules that are also considered *Sharî'a* rules. For Allâh, تعالى, concerning a fornicator [for example], has two rules: One is the mandatoriness of [inflicting] punishment upon him; the second is establishing fornication as a reason for obliging punishment upon him because fornication does not in and of itself oblige stoning, contrary to /1:94/ rational causes. It became obliging only because the *Sharî'a* made it obliging. Therefore, it is a category of rule. This is why we have mentioned it here in this *Quṯb*. Also, it is for this reason that it may be rationalized.

We say, [for example], that fornication has been established as the underlying cause [*'illa*] for stoning and that theft is the underlying cause for amputating so and so's [hand]. Thus, homosexuality is in the same category [as fornication], this is why it is considered a reason for punishment. Likewise, the grave robber is in the same category as the thief. An elaboration of this will follow in the "Book of Analogy [*Qiyâs*]."[5]

Know that the term *'sabab'* is ambiguous in the usage of the *faqîhs*. It is originally derived from *'ṯarîq'* [route] and from *'ḫabl,'* the [rope] used to draw water from a well.

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[5]Ghazâlî's more elaborate treatment of *qiyâs* is in his book *Shifâ' al-Ghalîl fî bayân al-Shabah wa al-Mukhîl wa Masâlik al-Ta'lîl*, Ed. Ḫamad al-Kabîsî (Baghdad: Dîwân al-Awqâf, 1971). His treatment of *qiyâs* in *al-Mustasfâ*, 2:228-349, and *al-Mankhûl*, p. 323-350, is shorter.

Its definition is something *through* which a thing occurs, not *by* it; for arriving occurs *through* walking, not *by* the route; but the route is necessary. Also, the drawing of water is *through* the vessel, not *by* the rope; but the rope is necessary. So the *faqîhs* have borrowed the term '*sabab*' from this case and applied it in four ways.

The **first** way—which is the closest of them to the original meaning— is what is used in correspondence to performing [an act], for it is said that a well digger along with a killer [who had pushed someone in the well] are accomplices in the reason. But the killer is the underlying cause, for killing is *through* pushing, but [only] *by* the existence of the well. So that *through* that which killing takes place, not *by*, is called *sabab*.

The **second** is their calling *shooting* a reason for killing, whereas it is the reason of the underlying cause. It is, properly speaking, the cause of the underlying cause. Since death has occurred through shooting, not in itself but as a mean, it resembles that without which a rule does not occur.

The **third** is their calling the underlying cause, itself, a reason, despite the absence of what characterizes it, such as their statement that an atonement is mandated by an oath, not its breaching. So the oath is the reason, or that possessing *nisâb*[6] is the reason for *zakât*, not the passing of a year, even though both of them are required for obligatoriness. They mean by *reason* that to

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[6]This is the minimum required amount of property subject to *zakât*. Qal'ajî, *Mu'jam Lughat al-Fuqahâ'*, p. 480.

which relating the rule is appropriate. They correlate this to the object and the condition. Therefore, they say possessing the *nisâb* is a reason and the passing of year is a condition.

The **fourth** is their calling the necessitating [factor] a reason, thus using reason to mean the underlying cause, which is the furthest away from the literal meaning. For *reason*, linguistically, is that through which a rule occurs, not by it. However, this is appropriate with regard to the underlying causes in the *Sharî'a* because they do not necessitate the rule per se; rather, it is [necessitated] through the obliging of Allâh, تعالى, and for establishing these reasons by Him as signs to manifest the rule. Also, because the underlying causes of the *Sharî'a* mean the manifesting signs of [the obligation], they resemble that through which the rule occurs.

SECTION TWO: THE CHARACTERIZATION OF REASON [*SABAB*] AS BEING VALID [*SAHÎH*], INVALID [*BÂTIL*], AND CORRUPT [*FÂSID*]

Know that these [characterizations] are used at times concerning the rites of worship and at other times concerning contracts. The usage concerning the rites of worship is subject to dispute.

What is correct according to the theologians is that which is consistent with the *Sharî'a*, whether restitution [*qadâ'*] is required or not. According to the *faqîhs*, it is that which suffices and [thus] omits restitution to the extent that the prayer of a person thinking that he is ritually pure is valid, according to the definition of the

theologians, for he has complied with the command directed to him immediately. /1:95/

As for restitution, its obligatoriness is based on a renewed command. Thus, the term *validity* cannot be derived from it. So this prayer is invalid because it is not sufficient. So it is with the case of one who interrupts his prayer to rescue a drowning person; his prayer is valid according to the theologian, but invalid according to the *faqîh*.

These various usages, although they differ, have no harm in them, since the meaning is agreed upon.

As for when they are used in contracts, every reason is established for a rule. When it imparts the rule intended from it, it is said, with regard to it, that it is validated. But if its intended [rule] fails, it is said to be invalidated. Therefore, the invalidated [*bâtil*] is that which does not have effect because the reason is sought for its impartation.

The valid, then, is that which has effect. But the corrupt [*fâsid*] is synonymous with the invalid [*bâṯil*] in the terminology of the followers of al-Shâfi'î, رحمه الله. Therefore, a contract is either valid [*saḫîḫ*] or invalid. Thus everything that is invalid [*bâtil*] is corrupt [*fâsid*].

Abû Ḫanîfa, however, has established another category between invalidity and validity, concerning contracts, namely creating the [category of] corrupt [*fâsid*], claiming that a corrupt [contract] is constituted for imparting the rule. But what is meant by its corruption is that it is unlawful because of what characterizes it, and what is meant by it being constituted is that it

is essentially lawful, such as the contract with usury. It is lawful because it is, on one hand, selling and it is unlawful, on the other hand, because it contains overcompensation. Therefore, this required a category between that which is prohibited, both essentially and for certain characteristics, and that which is lawful, essentially and for certain characteristics.

If this category of his were to be correct, one could not argue with describing it as *fâsid*. But he is disputed concerning it because every [contract] prohibited, for its character is prohibited essentially, as has been mentioned previously.

SECTION THREE: THE CHARACTERIZATION OF WORSHIP AS *ADĀ'* [TIMELY PERFORMANCE], *QAḎĀ'* [RESTITUTION], OR *I'ĀDA* [REPEATING]

Know that an obligation, when it is performed in its [prescribed] time, is called *adâ'*; and when it is performed after the expiration of its given restricted or latitudinal time, it is called *qaḏâ'* [restitution]; and when it is performed once in a deficient way but then perfomed again during the prescribed time, it is called *i'âda*. So *i'âda* is the term for the equivalent of what has been [deficiently] performed, while *qaḏâ'* is the term for the equivalent of what has missed the limitation of its time.

The discussion should address two questions:

The **first** of which is that if it preponderates in the mind of someone, concerning an obligation with latitude, that he may die before performing it, and then he delays, he is disobedient in the delay. But if he delays and lives, then his performance, al-Qâḏî,

رحمه الله, says, is *qaḏâ'* [restitution] because its time was determined by the preponderance in his thinking. This is not, however, acceptable to us because when it appeared different than what he thought, its rule was removed, and it becomes as if he had known that he would live. Thus he must intend to perform it, such as when an ill person near death delays *ḫajj* to the following year and then recovers.

Second is that, according to al-Shâfi'î, رحمه الله, *zakat* is an immediate [obligation]. Therefore, if one delays it and then gives it, it necessarily follows, according to al-Qâḏî's position, رحمه الله, that it would be [considered] *qaḏâ'*, while the correct position is that it is *adâ'* because its time was not determined for a specified or particular [time].

Yet we have only considered the obligation to be immediate by the circumstantial evidence of the need [of the poor]. Otherwise, performance at all times is in conformity with the command's requirement and is in compliamce with it. Such is the case with a person who is obligated to make restitution for a prayer immediately but delays it. /1:96/ We do not, then, say that this is the restitution of the restitution. This is why we say that the mandatoriness of restitution requires a renewed command, and the command that simply commands performance in itself is sufficient for the continuance of its requirement. Therefore, it does not require another proof or a renewed command.

What is correct, then, is that the term *qaḏâ'* is confined to that wherein its [prescribed] time is determin whereas the time lapsed before performing [the act].

A Subtle Point. Know that *qaḏâ'* may be used figuratively or literally because it comes after *adâ'* [timely performance].

Adâ' has four categories:

The first is [when] it is obligated. Therefore, when the locus of obligation abandons it, either deliberately or inattentively, *qaḏâ'* becomes mandatory upon him. However, punishment is waived for him by way of pardon due to his inattentiveness. Therefore, performing its equivalent afterward is termed *qaḏâ'* in the true sense.

Second is [when] *adâ'* is not obligated, such as fasting with respect to a menstruating woman, for it is prohibited. Therefore, when she fasts during ritual purity, calling this *qaḏâ'* is clearly figurative; rather in its true sense it is primarily an obligation. But, when this obligation is renewed because of an occurring condition that prevented obliging *adâ'* until it [the obligation] elapsed, due to the elapsing of its obligatoriness, it is called *qaḏâ'*.

This is difficult for some people. Consequently, they say that fasting, not prayer, is obligatory for a menstruating woman because of the necessity of *qaḏâ'*. And considering this term to be figurative, however, is more adequate than opposing *ijmâ'*, for there is no dispute that if a menstruating woman were to die, she would not be disobedient. So, how could she be commanded with that for which she would be disobeying if she were to perform it. However, menstruation is not like ritual impurity, for removing the latter is possible.

If it is said: Why then does she make the intention for the

qaḏâ' of *Ramaḏân*?

We shall say: If you mean by this that she makes an intention for the *qaḏâ'* of that [span] in which menstruation prevented its obligatoriness, this is correct. But if you mean that it is a *qaḏâ'* for that which has been obligated for her during menstruation, this is wrong and absurd.

If it is said: Then the adults should have the intention of *qaḏâ'* for that which has not been obligated because of juvenility.

We shall say: If one were to be commanded with this, he should have the intention to [comply]. However, suspending obligatoriness based on juvenility was not made a reason for mandating a new obligation after puberty. How could this be, while figurative usage becomes appropriate [only] because of commonness? This has been widely accepted concerning menstruation, not juvenility.

The reason for wide-spread acceptance [concerning menstruation] in particular is that juvenility suspends the principle of charging with obligation, while a menstruating woman is a locus of obligation. Accordingly, she is liable to obligation.

The **third** category is the status of the sick and the traveller, since [fasting] is not obliged for them. However, when they fast, their fasting stands in the place of obligation. It is possible in this case to say that it also is figurative usage since there is no obligation. But it is possible to say that it is used in the true sense. For if he were to do it at the prescribed time, it would be valid on

his part.

But when one breeches an act—inspite of its validity if he were to do it [again]—this is like a person who is obliged but neglects to act, either inattentively or deliberately. Or we may say that Allâh, تعالى, said, "Then a number of other days [are prescribed to make up for fasting],"[7] for this opens a way for options. Therefore, what is obligated is one of them, unspecified, except that this option cannot be realized until after the lapsing of the first. The first precedes in time. Therefore the [option] is called *qaḏâ'* because of its being related to its lapsing, contrary to manumission or fasting with regard to atonement, since none of them is related to the passing of the other.

But based on this, it necessarily follows that prayer should be called *qaḏâ'* at the end of the prescribed time, for one has an option between immediate performance or postponment, such as the traveller.

What is more evident /1:97/ is that calling the fasting of a traveller *qaḏâ'* is figurative, or that *qaḏâ'* is an ambiguous term which applies on one hand to that whose mandated timely performance has lapsed, and on the other hand to that which exceeds its time, which is widely known.

But *Ramaḏân* has a special relationship with fasting that does not exist for other than it, based on the proof that if a travelling minor were to reach puberty during *Ramaḏân*, he would not be obliged to fast. But if he were to reach puberty by the end of a

[7]Qur'ân, 2:185.

prayer's prescribed, time it [prayer] becomes incumbent upon him.

So, excluding it from the state of *adâ'* [timely performance] on the part of those generally [obligated] indicates mistakenly that it is restitution [*qaḏâ'*]. But examination dictates that it is not *qaḏâ'*.

If it is said: A sleeping person and one who is heedless should perform *qaḏâ'*, since there is no address [directed] to them, for they are not subject to obligation.

We shall say: They are related to heedlessness and negligence. But Allâh, تعالى, has pardoned them and removed punishment from them, contrary to a menstruating woman and a traveller. Therefore, abstention [from food, drink, etc.] is mandatory upon them for the remainder of the day resembling those who are fasting, but not the menstruating woman.

Regarding the traveller, there are two weak opinions:

The first of them is the opinion of the Ẕahirites that a traveller's fasting during a journey is not valid because of His statement, تعالى, "*Then a number of other days [are prescribed to make up for fasting].*" For He did not command him except by "a number of other days." But this is corrupt because the context of the verses indicates to us the implication of breaking the fast, meaning that whosoever of you is ill or on a journey and breaks fast should [fast] "a number of other days," just as His statement, تعالى, "*We said, 'Strike with your staff the rock', and there gushed forth from it . . .* ,"[8] meaning that he struck, thus it gushed. Also,

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[8] Qur'ân, 2:60.

the Companions of the Messenger of Allâh, صلى الله عليه وسلم, when travelling used to fast or break fast, and none of them objected to either.

The **second** is the position of al-Karkhî that what is obligated is "*A number of other days.*" But if one were to fast in *Ramadân*, it is valid, and he would be advancing the obligation just as one who pays *zakât* [in advance] before the end of the year. This is corrupt because the verse does not indicate other than concession in delaying and latitude concerning time for a person. Thsu he who performs in the beginning of a time with latitude is not advancing; rather, he is performing it within the prescribed time, as mentioned previously concerning prayer in the beginning of the prescribed time.

The **fourth** category is the case of an ill person. If he does not fear death from fasting, he is like a traveller. As for he who fears death or grave harm, he would be disobeying by abandoning eating. Therefore, it resembles [the case of] a menstruating woman from this aspect. So if he were to fast, it is possible to say it would not be valid, for he is disobeying in committing it. Thus, how can he seek nearness [to Allâh] in that by which he disobeys.

It is possible to say he has disobeyed by harming life, which belongs to Allâh, تعالى. Consequently, he is like one who prays in a usurped home, who disobeys by utilizing the property of another.

It is possible to say that it has been said to the ill person,

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"Eat!" So how could it be said to him, "Do not eat!" which is the meaning of fasting, contrary to prayer and usurpation?

It is also possible to answer that it has been said to him, "Do not destroy yourself!" and it has also been said to him, "Fast!" So he did not disobey by fasting, but by way of proceeding to destruction, and it is necessarily incumbent upon him [due to this position] to fast on the Day of Sacrifice. For it was prohibited because [in so doing] one abandons the invitation to eat the offerings and sacrifices, which is the hospitality of Allâh, تعالى. Yet the distinction between them [*qaḏâ'* and *adâ'*] is very difficult.

These are the plausibilites engaged by *mujtahids*. So when we say that his fasting is not constituted, then to call making up for it *qaḏâ'* is purely figurative, as is the case of the menstruating woman. Otherwise, he is like a traveller.

SECTION FOUR: *'AZĪMA* [RESOLUTION] AND *RUKHṢA* [CONCESSION]

Know that *resolution* [*'azîma*] means confirmed intent. Allâh, تعالى, has said: ". . . *But he [Adam] forgot, and We found he had no firm resolve*,"[9] that is, intense intent. Also, some of the messengers are called the *foremost of resolution*[10] to confirm their intent in pursuing the truth.

And *resolution* in the language of the bearers of the *Sharî'a* expresses that which is incumbent upon people on the basis of the obliging of Allâh, تعالى.

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[9]Qur'ân, 20:115.

[10]Ghazali is alluding to 46:35 in the Qur'ân.

Concession [*rukhsa*] linguistically means *ease* and *facility*. It is said, "The price has *eased*," if it decreases and buying is facilitated. In the *Sharî'a* terminology, it expresses that for which the locus of obligation has latitude in doing because of difficulty and incapacity, together with the enforcement of a prohibiting reason. For that which Allâh, تعالى, has not obliged upon us, such as fasting *Shawwâl* and the late morning prayer, is not called concession. Also, what He has originally permitted, such as eating and drinking, is not called concession. However, eating carrion is concession, and the waiving of fasting *Ramadân* for a traveller is called concession.

In sum, then, this term is used literally and figuratively. However, the literal [usage] is of a higher degree, like the permissibility of uttering the statement of disbelief under compulsion; and such is the case with drinking alcohol, or damaging the property of others because of compulsion, hunger, or choking on a morsel [of food] that cannot be swallowed except with the alcohol that one has.

On the other hand, the figurative usage, which is remote from the literal, is to call concession that which is waived for us from the burdens and the yokes that were incumbent upon those past communities. As for that which has not been obliged upon us nor upon others, this is not called concession. But since these [burdens] have been imposed on past communities, when we compare ourselves with them, then applying the term *concession* figuratively becomes appropriate. For the obliging of others is not restriction with respect to us. Concession is latitude as opposed to

restriction. Wavering between these two degrees are [various] modes, some of which are closer to the literal and some of which are closer to the figurative, for example, shortening [the prayer] and breaking the fast for a traveller. This is appropriately termed concession literally because the reason [of fasting], that is, the month of *Ramadân*, is in existence. Yet the traveller's [case] comes under His statement, فمن شهد—"*So those of you who are present in the Month, let him fast therein.*"[11]—and has been exempted from the generality by an excuse and hardship.

As for *tayammum*[12] in the absence of water, it is not appropriate to call it concession because it is not possible to oblige the use of water in its absence. Therefore, it is not possible to say that the reason in effect, in spite of the impossibility of the obligation, is contrary to the [case of] being compelled to disbelief or to drink [alcohol], for one is able to resist. Certainly, allowing this during sickness or injury, or the remoteness of water from a person, or selling it at more than normal is concession. In fact, *tayammum* in the absence of water is like feeding [the needy][13]

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[11]Qur'ân, 2:185.

[12]*Tayyammum* is a substitute for the ritual ablution before prayer in the absence of water or in special circumstance. For details see *The Shorter Encyclopaedia of Islam*, p. 588; and W. Zahîlî's *Al-Fiqh al-Islâmî wa Adillatuhu*, 1:406.

[13]Ghazâlî here is referring to the prescribed acts for the atonement of *zihâr* (a man prohibiting the lawfulness of his wife by declaring her as his mother), that is *fasting* two consecutive months or *feeding* 60 needy people only if *freeing* a slave is unattainable. See the Qur'an, 58:3-4.

when there is no slave [to free]—and this is not concession. On the contrary, [freeing] the slave is obligatory in one case, while feeding [is incumbent] in another. Therefore, we do not say that the reason is in effect in absence of the slave. Rather, *zihâr* is the cause obliging the manumission in one case and obliging feeding in another.

If it is said: If the reason for obliging ablution is removed by the absence of water, then the reason prohibiting disbelief, drinking, and [eating] carrion would be removed by fear of destruction, as if the unlawful is prohibited on the condition that fear is not present.

We shall say: What is prohibited in [eating] carrion is repulsiveness; in alcohol, intoxication; and in disbelief, being ignorant of Allâh, تعالى, or attributing falsehood to Him. But these prohibitions /1:99/ are in effect, while their rule has been removed by fear. Therefore, the suspension of every prohibition, which is removed by hardship or fear despite the possibility of resisting it, is termed concession; and changing the expression does not prevent this by making the discontinuance of hardship an added condition to the obligating [command].

If it is said: Concession is divisible into that which one disobeys by abandoning it—like the abandonment of eating carrion or breaking fast from fear of destruction—and into that which one does not disobey [for abandoning it], like breaking fast, shortening [prayer], resisting the statement of disbelief, and abandoning the

killing of the person who is compelled to kill him. So how could that whose fulfillment is necessary be called concession? And how is the distinction made between one and the other?

We shall say: As for describing it as concession, although it is mandatory, it is because it has latitude, since a person is not obligated to kill himself by thirst while it is permitted for him to relieve it with alcohol, while punishment would be waived for him. Thus, insofar as waiving punishment for his act, it is latitude and concession. But with respect to necessitating punishment for abandonment, it is resolution [*'azîma*].

As for the reason for the distinction, it is a matter of interest acknowledged by the *mujtahids*, and they have differed with regard to it. So some of them do not allow surrender to an attacker, while others allow [it], saying that the killing of another by him is prohibited, just as is his own killing; yet it has been permitted to him only because of [the attack on] him, although he may waive his own right when it confronts an equal [right].

Nor is he to destroy himself for the sake of abstaining from carrion or alcohol. For preserving life is of greater importance in the *Sharî'a* than abandoning carrion and alcohol in a rare circumstance.

For instance, [regarding] *salam*[14] [futures], which is selling what one cannot deliver immediately, it may be said that this is

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[14]In addition to Ghazali's definition of *'salam,'* see Aḫmad Sharabâṣî, *al-Mu'jam al-Iqtiṣâdî al-Islâmî* (Beirut: Dâr al-Jîl, 1401/1981), p. 225.

concession because of [the Prophet's] general prohibition, صلى الله عليه وسلم, in the *hadîth* [related by] Hakîm b. Hazâm against selling what one does not have, necessitating its prohibition. But the need of the insolvent individual requires concession regarding *salam*.

Also, there is no doubt in that giving in marriage an escaped female slave is correct. However, that is not termed concession. But when compared with the sale of a male fugitive slave, then it [the former case] has latititude.

However, it is said that marriage is another kind of contract, where its conditions differ from the conditions of *sale*. Thus, there is no correlation between them. Furthermore, it is possible to say that *salam* is a another contract, for it is sale of debt while the latter is sale of corporeal property, so they are distinguished. So their differing as to conditions does not necessarily enter one of them under concession. It is likely, then, that this is figurative. Thus, the statement of the reporter, "He prohibited a person from selling what he does not have, and gave concession regarding *salam*," is a figurative expression.

You should know that some of the Hanafites have stated that the definition of *concession* is that which has been allowed despite being prohibited. But this is contradictory, for that which has been allowed is not to be prohibited.

Others cleverly state that it [concession] is that to which concession is granted despite its being prohibited. But this is like the former because concession is also permission.

They have based this on their principle, for they say that

infidelity is bad per se; therefore, it is prohibited. Yet because of compulsion, one is granted concession concerning what is bad per se. Accordingly, if one were to persist and not pronounce infidelity, he would be rewarded.

In addition, they claim that if one compelled to break fast does not break it, he would be rewarded because breaking fast is bad and fasting is fulfilling the right of Allâh, تعالى. Furthermore, if one compelled to destroy [another's] property yields, they say that he will also be rewarded. Also, they claim that a person compelled to eat carrion and drink alcohol sins if he does not partake of them.

However, in these details, there is legal discussion that does not pertain to pure *usûl*. Yet the intent is to [indicate] that their statement that there is concession in what is prohibited is contradictory and has no validity, and Allâh, تعالى, knows best.

Examination of the First *Quṯb* is complete, namely examining the essence of *ḫukm* and its parts. Let us now examine what imparts the *ḫukm*, namely the sources.

THE SECOND *QUTB*
THE SOURCES OF THE RULES
THEY ARE FOUR: THE BOOK, THE *SUNNA*, THE *IJMA'*, AND THE RATIONAL PROOF ESTABLISHED ON THE ORIGINAL STATE OF NEGATION

(AS FOR THE STATEMENTS OF THE COMPANIONS AND THE SHARI'AS OF THOSE PRECEDING US, THERE IS DISAGREEMENT ON THESE.)

THE FIRST PRINCIPLE OF THE SOURCES

THE BOOK OF ALLĀH, تعالى

Know, upon actual examination, that the source of rules is one, that is, the statements of Allâh, تعالى, for the statements of the Messenger of Allâh, صلى الله تعالى عليه وسلم, do not establish rules nor obligations. Rather, he informs on the authority of Allâh, تعالى, that He has ruled on such and such. Therefore, ruling is for Allâh, تعالى, alone. *Ijmâ'* indicates the *Sunna*, and the *Sunna*, the ruling of Allâh, تعالى. As for reason, it is not a cause[1] of the *Sharî'a* rules; rather, it proves that rules are nonexistent in the absence of revealed authority. So, calling reason a source from among the principles of the sources is figurative, as will be substantiated later.

However, when we consider the manifestation of rules in relation to us, they do not become manifest except by the statements of the Messenger, عليه السلام, for we do not [directly] hear the words from Allâh, تعالى, nor from Jibrîl. Thus, the Book is manifested to us through the utterances of the Messenger, صلى الله عليه وسلم. So, if we consider that which manifests these rules, it is

[1]The root '*dalla*' linguistically means directed, guided, or caused. See Lane, 3:900. In view of Ghazâlî's position on reason with regard to revelation, the term *cause* is more reflective of the meaning of this word. See Zabîdî, *Tâj al-'Arûs*, 7:324-25.

only the utterances of the Messenger, since *ijmâ'* indicates that they [jurists] relied on his statements.

When we consider the cause of obligation, it is [only] one, namely the rule of Allâh, تعالى. Yet if we do not make rational abstractions but [instead] combine the established avenues of knowledge, the principles—which must be examined—would become four, as mentioned above.

Thus, let us begin with the Book and examine its essence, its definition—which sets it apart from what is not the Book— its expressions, and then its ruling.

THE FIRST CONSIDERATION: ITS ESSENCE

This refers to the speech subsisting in the being of Allâh, تعالى, which is one of His eternal attributes. The term *speech* is ambiguous and may be applied to utterances indicating what is in the mind. You say, [for example], "I *heard* the speech of so and so and his eloquence." Or it may apply to what the expressions represent, that is, the meanings in the mind, as has been said: "Indeed, words inhere in the mind, and the tongue is made only to convey what is in it."[2] Allâh, تعالى, said, "*And they said to themselves, 'Why does not Allâh punish us for what we say?'*"[3] and, "*Whether you conceal your words or proclaim them . . . .*"[4] It is

[2]This verse is attributed to al-Akhtal, "Ghiyâth al-Taghlibî." But, according to A. Hârûn, it is not in his *diwân*. See al-Jâhiz, *al-Bayân wa al-Tabyîn*, 1:218.

[3]Qur'ân, 58:8.

[4]Qur'ân, 67:13.

impossible to deny the ambiguity of this term.

Some people have said that it originally stood for utterances and, metaphorically, for their meanings. The reverse also has been stated. But this serves no purpose after its ambiguity has been established.

The speech inherent in the mind is divisible into predicates,[5] inquiries, commands, prohibitions, and admonitions. These are meanings that differ in their genre by [their] various volitions and cognitions. They are by their essence related to their objects, just as power, will, and knowledge are likewise related. Some people claim that they are reducible to knowledge and will, and are not independent genres. But establishing this is the task of a theologian, not a jurist.

Fasl:[6] The speech of Allâh, تعالى, is one. And in its unicity, all the meanings of words are contained, just as His knowledge is one, yet [with] its unicity, it encompasses the infinity of what is known, to the extent that not an atom's weight, neither in the heavens nor the Earth, escapes His knowledge.[7] But this is difficult to

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[5]For this technical meaning of '*khabar* ' (i.e. statements that are either affirmed or denied), see al-Jurjânî, *Kitâb al-Ta'rifât*, p. 101 and Tahânawî, *Kashshâf Istilâhât al-Funûn*, 1:412.

[6]Ghazâlî, not following the classical conventions of book divisions, chooses '*fasl*' here as a division approximately equivalent to a 'Discussion.'

[7]Ghazâlî is echoing the two verses in the Qur'ân, 10:61 and 34:3.

comprehend. Again explaining it is the task of the theologian, not the jurist.

As for speech inherent in the mind, with respect to us, it is multiple just as knowledge is multiple. His speech differs from ours in another way, namely no creature is capable of expressing words inherent in his mind except through utterances, signs, or gestures. But Allâh, تعالى, has the power to create necessary knowledge of His speech in whomsoever He wills among His servants without the intermediary of letters, sounds, or signs. He also creates in them hearing of [His] speech without the intermediary of letters, sounds, or senses. Whosoever hears it without an intermediary has definitely heard the speech of Allâh. That was the privilege of Moses, may the blessings of Allâh, تعالى, be upon him, upon our Prophet, and all other prophets. As for one who hears it from other than Him, such as from an angel or a prophet, calling it *hearing* the speech of Allâh, تعالى, is just like *hearing* the poetry of al-Mutanâbbi [recited] from other than him and saying that he has heard the poetry of al-Mutanâbbi. This is also permissible. Because of this, Allâh, تعالى, said, "*If any one of the pagans seeks your protection, grant it to him, so that he may hear the word of Allâh.*"[8]

THE SECOND CONSIDERATION: ITS DEFINITION

The Book is defined as that which has been transmitted to us

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[8]Qur'ân, 9:6.

through *tawâtur* between the two covers of the *Mushaf* [Codex] based on the well known seven recitations.[9] What we mean by *the Book* is the revealed Qur'ân; we have qualified it by the [term] '*Mushaf*' because the Companions took great precautions in transmitting it to the extent that they prohibited *ta'âshîr* [marking the Qur'ân in tenths] and *naqt* [inserting diacritical marks], requiring a bare [text] so that the Qur'ân would not be mixed with what was not [of the] Qur'ân.

It [the Qur'ân] has been transmitted to us via *tawâtur*. Hence we know that what is written in the agreed upon *Mushaf* is the Qur'ân. What is apart from this is not of it. For it is, by custom and habit, impossible—in the face of the super-abundant impetus to preserve it—that a part of it was neglected and not transmitted or that it was mixed with that which is not part of it.

If it is said: Do you not define it as *mu'jiz* [inimitable]?

We shall say: No, [for] its inimitability demonstrates the truth of the Messenger, عليه السلام, not necessarily that it is the Book of Allâh, تعالى, since inimitability is conceivable for other than the Book of Allâh, and a *portion* of a given verse is not inimitable, yet it is part of the Book.

If it is said: Then why do you require *tawâtur?*

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[9]For details on the various readings of the Qur'ân, see *Encyclopaedia of Islam*, s.v. "Qur'ân," by J. D. Pearson; and Kristina Nelson, *The Art of Reciting the Qur'ân* (Austin: University of Texas Press, 1985), pp.133-135.

We shall say: So that certain knowledge accrue by it because ruling based on what is not [certainly] known is ignorance. For something to be the speech of Allâh, تعالى, is an actual fact, and is not based on supposition, so that it depends on our presumptions. So it could be said, "If you think this way, then we have prohibited or made lawful for you certain acts." Thus, prohibition would be known to us by our presumption. In fact, our presumption would be an indication that prohibition is dependent on it, for prohibition is based on supposition. So, it becomes possible to base it on supposition at times of presumption. But considering that something is the speech of Allâh, تعالى, is an actual fact and is not based on supposition; so judging based on it is ignorance. Two discussions stem from the definition of speech.

I. DISCUSSION: Consecutive fasting for the atonement of breaking an oath is not mandatory, according to one view, in spite of Ibn Mas'ûd reciting, "Then fast three days *consecutively* . . . ."[10] For this addition has not come through *tawâtur* and, therefore, is not from the Qur'ân. So it should be construed that he mentioned it in the course of expressing what he held as an opinion. He may have believed in consecutive [fasting], construing the general to

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[10]The verse in the Qur'ân, 2:196, does not include the word *consecutive*, although in this report attributed to Ibn Mas'ûd it is added. For references to the *ḥadîth*, see Wensinck, *Concordance*, 1:263. However, according to Mâlik, *al-Muwaṭṭa'*, 1:305, and Zamakhsharî, *Kashshâf*, 1:345, this addition is attributed to 'Ubay b. Ka'b.

[mean] the specific as in the consecutive [months of fasting] for *zihâr*.[11]

Abû Hanîfa said that [consecutive fasting] is obligatory, even though it was not established as being of the Qur'ân. It is, at the very least, a report; and it is incumbent to act according to a solitary report. But this is weak because there is no proof denying a solitary report. If he considers it part of the Qur'ân, he is definitely wrong. For it is incumbent for the Messenger of Allâh, صلى الله عليه وسلم, to convey it to a group of the community such that proof is established by their statement. To secretly entrust it to one person was not permissible for him

If he [Abû Hanîfa] does not consider it part of the Qur'ân, it is possible that this may be one of his opinions based on proof indicated to him. Another possibility is that it may have been a report. However, it is not permissible to act based on what wavers between being accepted as a report or not. It is only permissible to act based on what a reporter explicitly states that he heard from the Messenger of Allâh, صلى الله عليه وسلم.

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[11]This is in reference to the Qur'ân (58:3-4) prescribing the atonement of fasting two consecutive months for the act of *zihâr*, which refers to a pre-Islamic form of divorce consisting of the statement of repudiation, "You are to me like my mother's back." For details on its definition and its rulings, see al-Zahîlî', *al-Fiqh al-Islâmî wa Adillatuhu*, 7:585-620, and Ibn Rushd, *Bidâyat al-Mujtahid*, 2:90-5.

II. DISCUSSION: *Al-Basmala*[12] is a verse of the Qur'ân. But whether it is the first verse of every *sûra* is disputed. The inclination of al-Shâfi'î, رحمه الله, is that it is a verse of every *sûra*, be it "al-Hamd" [the opening *sûra*] or the rest of the *sûras*. But it is, in the beginning of every *sûra*, a verse by itself, or it is a verse with the first verse of those sûras. This has been obscurely reported from al-Shâfi'î, رحمه الله. But this is more sound than the position of a those who construed the ambiguous statements of al-Shâfi'î to mean whether or not it is a part of the Qur'ân [at all] at the beginning of every *sûra*. Indeed, the correct view is that wherever it has been written in the Qur'ân in the script of Qur'ân, it is of the Qur'ân.

If it is said: The Qur'ân cannot be established except through decisively *mutawâtir* transmissions, and if this is decisive, then how could they differ with regard to it? If it is undecisive, how can the establishment of the Qur'ân rest on conjecture? If this is permissible, then it would be permissible to establish the mandatoriness of fasting consecutively for the atonement of [breaking an] oath, based on Ibn Mas'ûd's statement. Also, it would be permissible for the Rafidites to say that the Imamate of 'Ali, رضي الله عنه, has been determined by the text of the Qur'ân and that there were verses revealed about him which the Companions

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[12]This term refers to بسم الله الرحمن الرحيم, (In the Name of Allâh, the Merciful, the Compassionate), the first verse of all but one of the *sûras* of the Qur'ân.

concealed because of prejudices against him.

Our way of refuting them is to say only that the Qur'ân has been revealed as a miracle for the Messenger, عليه السلام, and the Messenger, عليه السلام, has been commanded to present it to a group of people by which proof is established. And since they are the people [constituting] *tawâtur*, it is not suspected of them to agree to conceal it, nor to confidentially relate it to a few individuals, so that know one brings forth denials. For the Companions exerted themselves to preserve the Qur'ân, to the extent that they were strict with the letters [of the Qur'ân] and prevented writing the names of the *sûras* together with the Qur'ân, *ta'âshîr*, and the [placing of] diacritical marks, so that the Qur'ân is not mixed with other than it. Since the customary practice makes concealment impossible, it is necessary that the manner of establishing the Qur'ân be decisive.

It was for this idea that al-Qâḏî held decisively the incorrectness of those who hold *basmala* as part of the Qur'ân, except in "Sûrat al-Naml." He further stated that if it was part of the Qur'ân, it would have been mandatory for the Messenger, عليه السلام, to clarify that it is from the Qur'ân in a way that precludes all doubts and uncertainties. Yet he [al-Qâḏî] stated, "He who holds this, I consider him mistaken, but do not charge him with unbelief. For its exclusion from the Qur'ân has also not been established by an explicit and *mutawâtir* text. Therefore, an adherent of this is mistaken and not an unbeliever." He admitted that the *basmala* was revealed to the Messenger of Allâh, صلى الله عليه وسلم, at the beginning of every *sûra* and was written as part of the Qur'ân in

the script of the Qur'ân by the command of the Messenger of Allâh, صلى الله عليه وسلم.

Indeed, Ibn 'Abbâs, رضي الله عنهما, said that Messenger of Allâh, صلى الله عليه وسلم, did not know the end of one *sûra* from the beginning of the next *sûra* until Jabrîl came to him with *"In the name of Allâh, the Merciful, the Compassionate"* [بسم الله الرحمن الرحيم] But it is not impossible that what was not Qur'ân[ic] was revealed to him.

Al-Qâḏî rejected the opinion of those who attribute *bid'a* [heretical innovation] to 'Uthmân, رضي الله عنه, for writing *"In the name of Allâh, the Merciful, the Compassionate"* [بسم الله الرحمن الرحيم] in the beginning of every *sûra*, and stated that if he has created *bid'a*, then it would have been customarily impossible for the people of religion to remain silent with him, despite their firmness in religion. How could this be since they objected to those people who entered the names of the *sûras*, diacritical marks, and *ta'âshîr*? So why did they not reply by saying, "We have innovated it as 'Uthman, رضي الله عنه, did in writing the *basmala*," especially when the names of the *sûras* are written distinguished from the Qur'ân itself, while the *basmala* is written similar to the text of the Qur'ân and is adjoined to it in a way that is not distinguish from it. Therefore, being silent with one who innovates this is customarily impossible unless it was a command of the Messenger of Allâh, صلى الله عليه وسلم.

As for the reply, we shall say: There is no validity in al-Qâḏî's categorical faulting of al-Shâfi'î, رحمه الله, because adding what is not the Qur'ân to the Qur'ân is infidelity, such that he who adds

the *qunût* [specific supplication] or *tashahhud* or *ta'awwudh*[13] to the Qur'ân is an infidel. So why doesn't he who adds *basmala* become an infidel? [For] he has no excuse, except when it is said that its negation from the Qur'ân is not established through a *mutawâtir* text.

Thus, we shall say that if it is not part of the Qur'ân, it would have been incumbent for the Messenger, صلى الله عليه وسلم, to explicitly state that it is not part of the Qur'ân and to promulgate it in a way that uproots doubt such as in *ta'awwudh* and *tashahud.*

If it is said: What is not part of the Qur'ân is unlimited and so can be denied, and, on the contrary, that which must be specified is what is actually from the Qur'ân.

We shall say: This would be correct if the *basmala* was not written by the command of Messenger of Allâh, صلى الله عليه وسلم, with the Qur'ân in script, and if it had not been revealed to the Messenger, صلى الله عليه وسلم, at the beginning of every *sûra*, which decisively impresses [upon one] that it is from the Qur'ân. It is inconceivable that the Messenger of Allâh, صلى الله عليه وسلم, did not know of its suggesting this and that it was permissible for him to remain silent from negating it—especially when adding it to [the Qur'ân] is suggested.

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[13]The *qunût* is a supplication said during a prayer, while *ta'awwudh* is saying *a'ûdhu billâh min al-Shayṯân al-rajîm*, I seek refuge with Allâh from Satan, the accursed. *Tashahhud* is the declaration of faith, witnessing that there is no god but Allâh and Muḫammad is His messenger.

However, al-Qâḏî, رَحِمَهُ الله, said that if it was from the Qur'ân, then doubt would be uprooted by a *mutâwatir* text that constitutes proof.

We shall say: If it is not part of the Qur'ân, it would have been incumbent upon the Messenger of Allâh, صلى الله عليه وسلم, to explicitly state that it is not part of the Qur'ân and to promulgate [this]. And he would have negated it by a *mutâwatir* text after he had commanded its writing in the script of the Qur'ân, since there is no excuse for being silent from uprooting this notion.

As for not explicitly stating that it [the *basmala*] is from the Qur'ân, this is based on circumstantial evidence, since it was dictated to the scribe with the Qur'ân. But the Messenger, عليه السلام, in the course of dictating [the Qur'ân], did not repeat with every word and verse that it was part of the Qur'ân. /1:104/ Rather, his sitting for it and his circumstantial evidences indicate that it was. All of this is known decisively.

Furthermore, since the *basmala* was ordered to be said at the beginning of all important matters, and since it appears at the beginning of *sûras*, some people think that it was written as a blessing. But this thinking is false. This is why Ibn 'Abbâs said, "Has Satan stolen a verse of the Qur'ân from the people,"[14] when some of them neglected reciting *basmala* at the beginning of the *sûras*. So he decisively stated that it is a verse. Yet he was

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[14]Ibn 'Abbâs' statement is reported in various ways. Some are in interrogative form. See al-Suyûtî, *al-Durr al-Manthûr fî al-Tafsîr bi al-Ma'thûr*, 1:19-23.

unopposed, as was the case with those who added *ta'awwudh* and *tashahhud* to the Qur'ân. Therefore, this proves that it was held as decisive and that doubt arose afterwards.

If it is said: After the occurrence of doubt and speculation, *basmala* became subject to *ijtihâd*, thus exiting the sphere of decisiveness. So how can the Qur'ân be established on the basis of *ijtihâd*?

We shall say: Al-Qâḏî, رَحِمَهُ الله, has held that differing in the numbering and length of the verses is permissible. He has admitted that this matter depends on the *ijtihâd* of the reciters; it was not sufficiently clarified in a manner that uproots doubt. But the *basmala* is part of the Qur'ân in "Sûrat al-Naml"; thus, it is decisively part of the Qur'ân. The dispute is only whether it is part of the Qur'ân once or as many times as it has been written. In this regard, it is possible for doubt to occur. Yet certainty is obtained through *ijtihâd* because it is an inquiry to determine the specific place of the verse after it has been written in the script of the Qur'ân. The occurrence of this is possible. Proof of the possibility of its occurrence and that it is permeable to *ijtihâd* is that the negator does not charge infidelity to he who adds it nor does he who adds it charge the negator with infidelity, contrary to [adding] the *qunût* and *tashahhud*. Thus, *basmala* has been opened to speculation. But writing it in the script of the Qur'ân with the Qur'ân, when considering the firmness of the Companions and their determination in preserving the Qur'ân from additions, has made it decisively or near decisively part of the Qur'ân.

If it is said: This issue has become speculative and has exited from being known through *tawâtur* as necessary knowledge, and is yet either decisive or speculative.

We shall say: Objectively, it is not decisive, but is subject to *ijtihâd*. The proof for the permissibility of [applying] *ijtihâd* upon it is the occurrence of differences about it during the time of the Companions, رَضِيَ الله عنهم, to the extent that Ibn 'Abbâs, رَضِيَ الله عنهما, said, "Has Satan stolen a verse of the Qur'ân from the people," and he was not charged with infidelity for adding it to the Qur'ân, nor did he face objections. Also, we know that if [Abû Bakr] al-Siddîq, رَضِيَ الله عَنْهُ, has transmitted that the Messenger, صلىّ الله عَلَيْهِ وَسَلَّم, has said, "*Basmala* is [part] of 'Sûrat al-Hamd' and is at the beginning all *sûras* written with it," this would have been accepted for the reason that it is written by the command of the Messenger of Allâh, صلىّ الله عَلَيْهِ وَسَلَّم. Had it been transmitted that the *qunût* is part of the Qur'ân, then its falsity would be known in a decisive way in which there is no doubt in it.

In sum, if we are to be objective, we find ourselves in doubt concerning the issue of the *basmala*, but certain in the case of the *ta'awwudh* and the *qunût*. But when we examine it being written with the Qur'ân by the command of the Messenger of Allâh, صلىّ الله عَلَيْهِ وَسَلَّم, together with his silence on explicitly denying that it is part of the Qur'ân, and after the cause of this impression is determined, this then becomes an evident proof or nearly decisive [for it] being part of the Qur'ân, proving that *ijtihâd* does not extend to the origin of the Qur'ân.

As for what is of the Qur'ân and is written in its script, *ijtihâd* does extend to it with regard to the specification of its placement and whether it is in /1:105/ the Qur'ân once or twice. We have presented proofs concerning this in the book, *Haqîqat al-Qur'ân*, and explained what has been thrusted against al-Shâfi'î, رحمه الله, for wavering in his positions concerning this issue.

If it is said: You have made reciting the *basmala* in prayer mandatory, and this is based on it being part of the Qur'ân. But its being of the Qur'ân cannot be established by conjecture because conjecture indicates the mandatoriness of acting with regard to what is subject to *ijtihâd*, otherwise it is ignorance, that is, not certain knowledge. Thus, it should be considered similar to *consecutive fasting* in the reading of Ibn Mas'ûd.

We shall say: Sound and explicit reports have been transmitted concerning the obligatoriness of reciting the *basmala*; and the fact that it is part of the Qur'ân is *mutawâtir* and certain.

But what it is doubtful is only whether it is part of the Qur'ân [only] in "Sûrat al-Naml" or many times at the of beginning every *sûra*. So how can it be equated with the reading of Ibn Mas'ûd while the Qur'ân is not established by it, nor is it a report? where sound reports have come to us concerning the mandatoriness of *basmala*, and it has been authenticated by *tawâtur* that it is part of the Qur'ân. In sum, the difference between the two issues is evident.

THE THIRD CONSIDERATION: THE WORDS OF THE QUR'ĀN
Three Discussions

I. DISCUSSION: The words of the Arabs contain literal and figurative [expressions], as their distinction shall follow.[15] Therefore, the Qur'ân contains figurative [expressions], contrary to what it held by some.

We shall say that the term *figurative* is ambiguous and may apply to falsities that have no reality. But the Qur'ân is exonerated from this. And this may have been what was taken by those who deny the existence of figurative usage in the Qur'ân.

Also, it may apply to a word that has exceeded its literal meaning. This, in the Qur'ân, cannot be denied, for He, تعالى, has said:

> " '. . . *And ask the village where we have been and the caravan* . . . ' "[16]

> ". . . *And they found a wall willing to fall, and he repaired it..*"[17]

> ". . . *There surely would have been pulled down Monasteries, Temples, Prayers, and Mosques* . . . "[18] But how can "prayers"

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[15]See the seventh chapter of the Third *Quṭb*, 1:341-45. For more information consult, al-Zarkashî, *Burhân fī 'Ulûm al-Qur'ân*, 2:255-98, where he lists 26 types of metaphorical usages in the Qur'ân.

[16]Qur'ân, 12:82.

[17]Qur'ân, 18:77.

[18]Qur'ân, 22:40.

be pulled to the the ground.

"*. . . When some of you return from the call of nature . . .*"[19]

"*. . . Allâh is the light of the heavens and the Earth . . .*"[20]

"*. . . Those who annoy Allâh . . .*,"[21] meaning His Messenger;

"*. . . The one who assaults you, assault him in a like manner.*"[22] If retribution is just, how can it be called assault?

"*Recompense an offense with an equal offense . . .*"[23]

"*. . . And then Allâh mocks them . . .*"[24]

"*They plot and Allâh plots . . .*"[25]

"*Whenever they light a fire of war, Allâh extinguishes it.*"[26]

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[19]Qur'ân, 2:43.

[20]Qur'ân, 35:24.

[21]Qur'ân, 33:57.

[22]Qur'ân, 2:194.

[23]Qur'ân, 42:40.

[24]Qur'ân, 2:15.

[25]Qur'ân, 8:30.

[26]Qur'ân, 5:64.

"*We have prepared for disbelievers a fire, its tent encloses them . . .*"[27]

[There are] countless cases like these. All are figurative, as it will be discussed below.

II. DISCUSSION: Al-Qâḏî, رَحِمَهُ الله, said that the entire Qur'ân is Arabic and that there are no foreign elements in it. But some people have said that there are non-Arabic words in it.[28] They argue that '*mishkah*' [niche] is Hindi and that '*istabraq*' [type of silk] is Persian. And, [concerning] His saying, "*And fruits and* abb [a type of grass] . . . ,"[29] some have said that '*abb*' is not Arabic.

Arabs may use foreign words. In some poetry, the word '*athjat*[30] means the head position and it has become Arabicized, just as *mishkah*. Al-Qâdî forced the addition of these words to

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[27]Qur'ân, 1829.

[28]Al-Shâfi'î's *Risâla*, p. 41, contains the oldest recorded discussion on the Arabicity of the language of the Qur'ân, where he states that the Qur'ân is purely Arabic. Others held the same opinion, like Abû 'Ubayd, al-Ṯabarî, and al-Bâqillânî. The majority of the *fuqahâ'* hold the opinion that foreign words found in the Qur'ân have become Arabicized. For details, see al-Zarkashî, *Burhân fî 'Ulûm al-Qur'ân*, 2:289.

[29]Qur'ân, 80:31.

[30]According to Muḫammad al-Bilbâsî al-Ḫusaynî, the editor of the Amîrî edition of *al-Mustaṣfâ*, in another manuscript the word is '*ashjat*. According to Ibn Manẕûr, *Lisân*, 2:318; and Zabîdî, *Tâj al-'Arûs*, 2:70, the root '*'ayn' 'thâ' 'jîm'* means a group journeying, a large number, or a huge, solid, and speedy camel.

Arabic, and explained its forms. He said that every word in the Qur'ân that has been used by people of other languages has its roots in Arabic. But other people altered them to a degree, as did the Hebrews. For *illah* [God], they say *lahût* and for *nas* [people], *nasût*. And he denied that there are in the Qur'ân non-Arabic words. He argued on the basis of His saying, تعالى, "*. . . The tongue of he whom they wickedly point to is outlandish, while this is clear Arabic speech . . .*"[31] "*Had we sent this as a Qur'ân in a foreign tongue, they would have said, 'If only its verses were expounded. Not in Arabic? And an Arab? . . .*' "[32] Thus, if there were in it non-Arabic words, then it would not be pure Arabic. Rather, it would be Arabic and non-Arabic. The Arabs would have used this as an argument saying, "We are not impotent as far as Arabic is concerned. As for the foreign tongues, we are unable to comprehend them."

This is unacceptable to us in view of the fact that the entire Qur'ân contains two or three [words] of foreign origin. Moreover, the Arabs had used them, so they had occurred in their language. This does not change the Qur'ân from being Arabic nor the use of this term [Arabic] to describe it. There would be no smooth way for Arabs to argue [on this basis]. For Persian poetry is Persian, even though it contains certain Arabic words, since those words are common in Persian. There is no need to belabor this.

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[31]Qur'ân, 16:103.

[32]Qur'ân, 41:44.

III. DISCUSSION: The Qur'ân contains perspicuous and allegorical verses, just as the Exalted said, ". . . *The Book, wherein there are perspicuous verses—they are the essence of the Book—and others which are allegorical . . .*"[33] They have differed on its meaning. And since no text[34] came explaining these words, they should be interpreted based on what the philologists recognize and what corresponds with the literal meaning of the words. Thus, it is inappropriate to say that the allegorical are the individual letters occurring at the beginning of some *sûras* and that the rest are the perspicuous; nor [is it appropriate] to say that the perspicuous is known to the well-grounded in knowledge and that the allegorical is known only to Allâh, تعالى; nor [is it appropriate] to say that the perspicuous are the promises and threats or the lawful and unlawful and that the allegorical are the stories and examples—and this is more remote.

Rather, the correct position is that the perspicuous is reduced to two meanings:

The **first** of which is that its meanings are open and is not permeable by ambiguities and probabilities, while in the allegorical, probabilities are contradictory. The **second** is that the perspicuous is what has been systematized and arranged

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[33]Qur'ân, 3:7.

[34]Here Ghazâlî uses the term *tawqîf*, which means decisive authoritative text. Consult Zabîdî, *Tâj al-'Arûs*, 6:270; and Madkûr et al., *al-Mu'jam al-Wasît*, 2:1064.

sequentially to impart meaning, either based on what is evident or interpreted, as long as there are neither contradictions nor variance in it. The perspicuous is opposite to the obscure and the corrupt, not to the allegorical.

As for the allegorical, it is possible to express through it ambiguous terms such as *qur'*;[35] and as in his saying, تعالى, "*. . . He who has in his hand the knot of marriage . . .*"— for *he* wavers between the *husband* and the *guardian*— also '*lams*', which wavers between *touching* and *sexual intercourse*.[36]

It may apply to what has been transmitted regarding the attributes of Allâh, in which its apparent meaning deludes assigning direction and ascribing human characteristics to Him, requiring interpretation.

If it is said: [In] His saying, تعالى, "*None knows its interpretation except Allâh and those who are well-grounded in knowledge . . .* ,"[37] is *and* conjoining what precedes it with what follows it, or is it more appropriate to stop after [the word] *Allâh*?

We shall say: Either one is tolerated. So, if what is intended by this is at the time of resurrection, stopping is more appropriate; if otherwise, conjoining is. For it is evident that Allâh, تعالى, does not address Arabs with that which there is no way for any creature

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[35]This term may mean either menstruation or purity. See Qal'ajî, *Mu'jam al-Lughat al-Fuqahâ'*, p. 359.

[36]See Qal'ajî, *Mu'jam al-Lughat al-Fuqahâ'*, p. 393.

[37]Qur'ân, 3:7.

or any person to know.

If it is said: What is the signification, then, of the letters in the beginning of some *sûras* since no one knows their meanings?

We shall say: People have said much about this. One of the more likely assertions is that they are names of the *sûras* so that they can be recognized by them. Hence, it is said that the *sûra's* name is "Yâ Sîn" or "Tâ Hâ."

It has also been said that Allâh, تعالى, has mentioned them to focus the attention of the Arabs to listen because it differs with their conventions. It thus awakens them from heedlessness, such that it moves their hearts to attentiveness. Hence, he did not mention them for a stated meaning.

Then again, it is said that He only mentioned them alluding to the rest of the alphabet, which none of the Arabic words exceed, alerting that He does not address them except through their language and their alphabet, and one may alert by using part of something for the whole.

It is said, "He recited 'Sûrat al-Baqara' and sung 'Alâ Hubbî,' "[38] meaning the entire *sûra* and the whole poem. A poet has said, "He implores me with '*Ha Mîm.*', at the piercing of the spear; but why did he not recite '*Ha Mîm*' before attacking?" He eluded to the

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[38]This is the opening phrase of the first verse in 'Amr b. al-Kulthûm's poem. For more information, see Paulis Salâma, *al-Mu'allaqât al-'Ashr* (Beirut: Dar Sa'b, 1981), p. 113; and Ahmad *al-Shanqîtî, Sharh al-Mu'allaqât al-'Ashr wa Akhbâr Shu'arâ'ihâ*, (Beirut: Dâr al-Andulus, 1402/1982), p. 137.

Qur'ân with '*Ha Mîm.*' Thus, it is established that there is nothing in the Qur'ân that Arabs do not understand.

If it is said: Arabs only understand a direction and settling from His statement, تعالى, "*He is the Omnipotent over His worshippers . . .*";[39] "*The Beneficent One, who is established on the throne . . .*"[40] But what is intended by this is different. Therefore, it is allegorical.

We shall say: This is preposterous! These are metonymical and metaphorical expressions understood by the believers among Arabs who testify that nothing resembles Allâh, تعالى, and these verses are interpreted in a way suitable to the comprehension of the Arabs.

THE FOURTH CONSIDERATION: THE CHARACTERISTICS OF THE QUR'ĀN

Part of these characteristics include the penetration of interpretations to the apparent meaning of its words, the penetration of specification to the general cases, and the penetration of abrogation to its requirements. As for specification and interpretation, they will follow in the Third *Qutb*. For we have elaborated on the manners of its utilization and deduction from expressions, connotations, etc.

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[39]Qur'ân, 6:61.

[40]Qur'ân, 20:5.

As for abrogation, the general custom has been to place it after the book of traditions because abrogation permeates the Book and the *Sunna* altogether. But we have placed it with the characteristics of the Book for two reasons: One of which is its ambiguity and obscurity in view of it being permeable by the speech of Allâh, تعالى, despite the impossibility of *bada'* [His change of mind]. Second is that the discussion on traditions has been extended because of its connection with knowing its various types of *tawâtur* and *aḫâd* [reports]. Therefore, we have decided that it is more appropriate to place it after the characteristics of the Book.

THE BOOK OF ABROGATION

EXAMINATION OF ITS DEFINITION AND ESSENCE; ESTABLISHING IT AGAINST ITS DENIERS; ITS ESSENTIAL CONSTITUENTS AND CHARACTERISTICS
Outlined in [Two] Chapters

CHAPTER ONE: ITS DEFINITION, ESSENCE, AND ESTABLISHMENT

[*Section one of this Chapter: Its definition*]

As for its definition, know that in its original linguistic sense *abrogation* ['*naskh*'] means to *obliterate* or *eliminate*, as in saying, "The sun *eliminated* [*nasakhat*] the shade, and the wind *obliterated* the traces," when it signifies 'abolition.' At times, however, '*naskh*' applies to the abrogation of documents. Thus, it is ambiguous. For our purposes, *abrogation* denotes *obliteration* or *elimination*. Therefore, we say that it can be defined as an address—which must be in delay of the address it obliterates—that indicates the elimination of an established rule of a prior address in such a manner that, were it not for [the new address], the prior would have remained standing.[1]

We prefer the term *address* to *text* so so as to be inclusive of

[1] Al-Râzî copied this definition and stated that Ghazâlî took it from al-Bâqillânî because he was satisfied with and agreed to it; al-Râzî, *al-Mahsûl*, 1:423.

form, signification, implication, and each proof, since abrogation is possible on the basis of any of these. In addition, we have made the phrase *prior address* a provision in the definition, for locating the obligations of worship in the *Sharî'a* abolishes the authority of Reason in [man's pre-*Sharî'a*] state of nonresponsibility. This, then, cannot be termed abrogation, for it does not 'eliminate' a rule of an address.

Indeed, we have made 'elimination of a rule' a provision—and not simply the elimination of 'commands' or 'prohibitions'—so as to include every type of rule, including the recommended, the reprehensible, and the permissible, for each of these may be abrogated.

We state that 'were it not for [the new address], the prior one would have remained standing' because the essence of abrogation is obliteration. Thus, if the one were not established, the other would be eliminating nothing. For /1:108/ if a command comes with a time-specific rite of worship, and a second obliges a certain worship outside that [rite's] time, the second is not considered to be in abrogation of the first. Therefore, when He says, "*Completing fasting until night..*"[2] and then instructs, "*Do not fast at night . . .*," this is not abrogation. Rather, an eliminating address is one without which a rule cannot be removed.

We also say "in delay of the address" simply because if there were no interruption it would be merely explanation for or completion of the prior address, setting its duration or condition.

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[2]Qur'ân, 2:187.

Also, it can be elimination only if it comes after the prior rule has arrived and been established in such a way as to remain [in effect] but for the abrogating address.

As for the *fuqahâ'*, they do not accept the elimination of the speech of Allâh, تعالى. So they say, in defining *naskh*, "It is an address which indicates or reveals the duration of the rites of worship or the time of their expiration. This necessitates that His statement, "*Fast in the daytime, and eat at night . . .*" be a case of abrogation, and also His statement, تعالى, "*. . . Then complete fasting till night . . .*" be one of abrogation. But this verse does imply elimination, nor is it sufficient for the *fuqahâ'* to add the condition of delay; for since His first statement is confined to daytime only, it in itself excludes night. So where is the notion of abrogation?

In fact, what is eliminated is only that which comes under the earlier address—and the expression is intended to indicate this. Rather, what they have mentioned is specification. However we shall explain how abrogation is distinct from specification. Furthermore, we shall even demonstrate that one act, when it is commanded at a certain time, may be abrogated even before the ability to comply with it exists, or before its time. Therefore, this cannot be merely indicative rite of worship's duration or expiration.[3]

As for the Mu'tazilites, they define *abrogation* as an address indicating that the equivalent of a rule established by a prior text

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[3]See al-Râzî, *al-Mahsûl*, 1:467-478, for his discussion on this point.

has ceased, and that [address] without which [a given rule] would have remained established. Sometimes they substitute the term *ceased* with *dropped*. At other times they substitute it by the word *unestablished*. All of this is to avoid [using] the term *elimination*.

Yet the essence of abrogation is elimination. Thus, it is as if they have emptied the definition of the essence of what it defines.

If it is said: Substantiating the meaning of elimination with respect to the [*Sharî'a*] rules is objected to for five reasons:

First, an eliminated rule must be either established or not established. It is not possible to eliminte an established rule, and there is no need to eliminate what has not been established, which proves that abrogation is the obliteration of an equivalent to the established rule, not the rule's elimination per se; or it is an explanation for the time of the rites of worship, as the *fuqahâ'* have stated.

Second, according to you, the speech of Allâh, تعالى, is eternal.[4] Yet the obliteration of the eternal is inconceivable.

Third, what Allâh, تعالى, has established has been so purely because of its goodness. Therefore, if He then were to prohibit it, this would result in changing the good into bad, which is absurd.

Fourth, whatever He commands is willed into existence. How, then, could it be prohibited, such that its existence would be 'unwilled' and abhorred?

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[4]This refers to the Ash'arites.

Fifth, abrogation indicates change of mind [*badâ'*],[5] for He would have forbidden something 'after' ordering it to be. Thus, it is as though something occurred to Him about a judgement He made, which He regretted.

So the first absurdity arises from the impossibility of elimination per se. The second concerns the eternity of speech. The third regards an attribute of what is commanded, as to whether it is essentially good or bad. The fourth concerns the coalescence of will to command. The fifth concerns knowledge in relation to [the act of abrogation] and the occurrence of a subsequent change of mind.

In answer to the first objection, eliminating the obliterated is like the breaking of what is broken, or the annulment of a contract. For if someone says, "What is the meaning of 'breaking' a utensil /1:109/ but the destruction of its form, be it quadrangular, hexagonal, or circular? For what is obliterated by the breaking [in the latter case] is the 'roundness,' which either 'is' or 'is not.' As for the nonexistent, there is *no need* to eliminate it; and as for the existent, there is *no way* to eliminate it." Thus, it must be said that this implies that the integrity of the utensil's form necessitates the continuity of its form perpetually, so long as a 'breaking' cause does

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5Linguistically *badâ'* means appearance or emergence. In the terminology of *kalâm*, it refers to the appearance of new situations causing a change in a prior divine judgement. See *The Encyclopaedia of Islam*, new ed., s.v. "Badâ'," by I. Goldziher's [A. S. Tritton]; and Mulla Sadra for a philosophical discussion on *badâ'*,

not occur. Therefore, the breaking cause disrupts what the integrity of the utensil's structure would perpetually necessitate, were it not for the 'breakage.'

Similarly, annulment terminates a contract's validity, where it would be perpetual, provided that nothing new enters upon it, were it not for the annulment's occurrence. This is because sale is a cause for exclusive ownership, so long as no unforeseen disruptions occur. But, with respect to annulment, the occurrence of an unanticipated disruption does not prove to us that at the time of contraction the sale was temporarily extended to the point of annulment.

We do not comprehend when you say, "I sold you this house for a year." But we do understand your statement, "I sold and granted possession of this house to you forever. Then we can annul it after the passing of one year." We realize the difference between the two forms: The first establishes a limited ownership, per se; and the second establishes absolute ownership, perpetuating until disrupted by annulment. But when it is annulled, the annulment terminates its perpetual nature, which were it not for the disrupting clause, exists by virtue of the contract; nor is the annulment a qualification of limitation per se.

Based on this, abrogation is distinguished from specification. For specification clarifies to us that an expression was intended to include only some [of its meanings], while abrogation lifts out from an expression that which it was intended to indicate. But owing to the obscurity of the meaning of *elimination*, it became problematic for the *fuqahâ'*; who fell into denying the meaning of abrogation

altogether.

As for the reply to the second objection, namely the impossibility of obliterating eternal speech, this is corrupt. For the meaning of *abrogation* is not [actually] *obliterating* the speech; rather, it denotes terminating its relationship with the locus of obligation.

Moreover, eternal speech is related to the able and the sane. So, if incapacitation or insanity occurs, this relationship terminates. But when sanity and capacity are restored, the relationship resumes, though eternal speech does not change per se. Furthermore, the incapacitation or the death of the addressee are 'causes' for severing the relationship between the address and the person. But the abrogation of the Addressor is a 'means' of terminating the relevance of the address [to the person]—just as with the status of sales, where granting ownership to a buyer [of a slave, for example] is at times annulled by the death of the sold slave and at other times by the annulment of a contracting party. Due to the obscurity of these ideas, a group denied the eternity of [Allâh's] speech.

In answer to the third objection—the trnasformation of good into evil—we have already refuted the [Mu'tazilites'] notion of good and evil, and the fact is that they have no meaning. This is better than an argument based on the excuse that it is possible for a thing

to be good at times and bad at other times.[6] For He has said, in regard to *Ramadân*, "*Do not eat in the day*," and "*Eat at night*." For abrogation is not confined, according to us, [only] to like things. Rather, it is possible for Him to command something at one time and prohibit it before the beginning of [the given] time. Thus, He would be prohibiting what He has commanded to be fulfilled, as will follow.

As for the reply to the fourth objection, namely that what is willed becomes abhorred, this is false because command, according to us [i.e., Ash'arites], is distinct from will. For disobedience, in our view, is intended [by Allâh] but is not commanded. A full examination will come in the Book of Commands.[7]

In response to the fifth objection, namely the necessity of change of mind [on Allâh's part], this is false. For if what is intended is that it necessarily follows from abrogation that He prohibits what He has allowed and forbids what He has commanded, then this /1:110/ is permissible. "Allâh blots out and He establishes whatsoever He wills. . . ."[8] Nor is there contradiction in this, just as He allowed eating at night and prohibited it during the day [in *Ramadân*].

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[6]See Lane, 5:1984, for the various meanings of "*uthr*."

[7]Ghazâlî, *al-Mustasfâ*, 1:411-417.

[8]Qur'ân, 13:39.

But if what was intended is that something had become unveiled to Him of which He was not previously aware, this is impossible. Nor does this follow necessarily from abrogation. Rather, Allâh, تعالى, knows that He orders people with a general command and perpetuates the obligation until a determined time. Then He terminates the obligation by abrogating it for them. So He abrogates it at the time which He has determined for its abrogation. Hence, this does not entail learning after ignorance.

If it is said: Are people commanded in Allâh's knowledge up until the time of abrogation only, or forever? If it be until the time of abrogation, then abrogation specifies the duration of worship, as the *fuqahâ* have stated. But if they are commanded forever, then His knowledge and its object have changed.

We shall say: They are commanded in His knowledge until the time of abrogation, which is the termination of the general command for them, without which the command would continue, just as Allâh, تعالى, knows that the general contract imparts ownership until it is terminated by annulment. But He does not know the contract, per se, to be limited to a period. Rather, He knows it to be necessitating ownership perpetually, provided that no annulling factor occurs. Still, He knows that abrogation shall occur. Thus, the command is terminated for the elimination of its condition, not for its inadequacy, per se. Therefore, abrogation does not necessitate a change of mind.

As a result of the failure of the Jews to comprehend [this], they denied abrogation. Also, the Rafidites committed *badâ'* 'due to

their failure to comprehend. They have related about ʻAli, رَضِيَ الله عَنْهُ, that he did not report on the unseen, for fear that something might appear to Allâh, تَعَالَى, with regard to it and cause Him to change His mind. Also, they said of Ja'far b. Muhammad that he said, "Allâh has never changed His mind with regard to anything as He changed it concerning Ismâ'îl"— that is, His command to sacrifice him. This is unadulterated infidelity, relating Allâh, تَعَالَى, to ignorance and change! What demonstrates its absurdity is the proof that He encompasses everything in His knowledge. Furthermore, He is not a locus for accidents or changes.

Sometimes they argue on the basis of His statement, تَعَالَى, that "*Allâh 'blots out,' and He 'establishes' whatsoever He wills. . . .*"[9] But it means only that He "blots out" the abrogated command and "establishes" the abrogating [one]. Or, He "blots out" misdeeds with repentance, as He, تَعَالَى, said, ". . . *Surely the good deeds will drive away the evil deeds. . . .*"[10] Or, He "blots out" the good deeds with infidelity and apostasy. Or, He "blots out" what the guardian Angels take up to Him from that which is permissible and affirms obedience.

If it is said: What is the distinction between specification and abrogation?

We shall say: In one respect, both share common meaning,

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[9]Qur'ân, 13:9.

[10]Qur'ân, 11:114.

since each necessitate specifying the command [in the sense of restricting it] to 'part' of what is obtained in the meaning of the [target] expressions. But *specification* clarifies that what has been excluded from the [implications] of the general [linguistic] form is not meant to be denoted by its expression, while abrogation eliminates from the expression [exactly] what it was intended to denote. For example, His statement, "*Do everlastingly!*" is possible to be abrogated, though the expression is not intended for a specific time, but for all time. But its continuation [depends] upon the condition that no abrogating command occurs, as when someone says, "I grant you ownership forever"; but then says, "I annul it." Therefore, this annulment expresses what contradicts the condition of the command's continuity after its establishment, that is, what is meant to be indicated by the expression. Therefore, they differ on five points.

First, the abrogating command must come later [than the standing one], while it is permissible for specification to be adjoined, for it is an explanation. In fact, its adjoinment is necessary according to those who do not permit a delay for the explanation.

Second, specification does not apply to a command if only one thing is commanded, /1:111/ though abrogation does apply.

Third, abrogation occurs only through a statement and an address, while specification may occur by rational proof, circumstantial evidence, or other authoritative proofs.

Fourth, specification preserves the meaning of the expression which is applied to that portion of it which remains

unspecified—whether the expression is literal or figurative and irrespective of any dispute concerning this. But abrogation abolishes entirely the indication of the abrogated [expression] for the future.

Fifth, specification of a general [expression] which has a decisive base is permissible through *qiyâs*, solitary reports, and other proofs, though abrogation of what is decisive is not permissible except by what is likewise decisive.

So the position that some of them espouse, namely that abrogation applies only to time, is not a correct distinction, though specification applies to time, entities, and circumstances. But this is figurative and vague because entities and time are not of the acts of the loci of obligation. For abrogation applies to an act at certain times, and specification applies to an act in certain conditions.

Therefore, if He says, "*Kill the misbelievers* [mushrikîn], *except those with whom you have a compact* [mu'âhada],"[11] which means do not kill them in the state of compact, but kill them in the state of war. What is intended is for each of them [specification and abrogation] to apply to acts.

Now, this is sufficient for revealing the essence of abrogation.

Section Two of this Chapter: Establishing Abrogation Against its Deniers

The occurrence of abrogation based on either rational possiblity or revealed authority is denied.

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[11] This term refers to a Christian, a Jew, or a Sabian who is subject to Muslim rule.

As for its rational possibility, it is proven by the fact that if abrogation were impossible, it would then be impossible either per se, in form, or in the falsehood it generates or the absurdity it leads to.

It is not impossible in itself or in its form, based on the evidence that we have established regarding the meaning of *elimination* [*raf'*] and our clarifications of its obscurities. Nor is it impossible as a result of its leading to corruption and evil, for we have refuted this whole principle. Even if we granted this, it is not out of the question that Allâh, تعالى, may know that the benefit of His worshippers [lies] in ordering them [first] with a general command so as to prepare them with the determination to refrain from disobediences and passions; and then He lightens their burden.

With reference to its occurrence on the basis of revealed authority, it is proven by *ijmâ'* and the texts.

As for the *ijmâ'*, the consensus of the entire *ummah* is that the *Sharî'a* of Mu<u>h</u>ammad, صلى الله عليه وسلم, has abrogated the *sharî'as* preceding him, either in their entirety or only with regard to that where he disagrees with them. This is agreed upon. Thus, whoever denies this is violating *ijmâ'*. Indeed, a few Muslims have denied abrogation, though *ijmâ'* preceded them. Therefore, this *ijmâ'* is proof against them, even though it is not proof against the Jews.

As for the text, there is His statement, تعالى, "*And when We substitute a verse in place of another verse—and Allâh knows very well what He sends down—they say you are a forger. Rather, most*

of them have no knowledge."[12] Substitution [here] includes elimination and affirmation, and what is eliminated is either recitation or a standing rule. Whatever the case may be, it is elimination and abrogation.

If it is said: What is meant by this is not the elimination of what is revealed, for the elimination or the substitution of what has been revealed is not possible. Rather, it means substituting the place of a verse by revealing one instead of another that has not been revealed. So, it is as if what has not been revealed is substituting what has been revealed.

We shall say: This is a senseless, convoluted [argument]. For how can what has not been revealed be substituted, while the substitute requires something to substitute? Furthermore, how could the term *substitution* be applied to the first [instance] of revelation? This is foolishness and absurd.

The second proof /1:112/ is His statement, تعالى, "*As for the wrongdoings of the Jews, We have forbidden them good things which were permitted to them . . . .*"[13] There is no meaning for abrogation except the forbidding of what has been permitted. So it is with His statement, تعالى, "*And whatever verse We abrogate or cause to be forgotten,We bring one better or its like . . . .*"[14]

[12]Qur'ân, 16:101.

[13]Qur'ân, 4:160.

[14]Qur'ân, 2:106.

If it is said: He may have meant specification by this.

We shall say: We have distinguished between specification and abrogation. Therefore, there is no way to change the expression. How could this be, while specification does not require a substitute that is like or better than it? Rather, it is only an explanation of the meaning of the discourse.

The **third** proof is an example well known in the *Sharî'a*, concerning the abrogation of a widow's waiting period of one year by [a period] of four months and ten days; and the abrogation of the obligation of giving charity before having private counsel with the Messenger, صلى الله عليه وسلم, since the Exalted has said, "... *Give charity before having private counsel with the Messenger. . . .*"[15] Such is the case with the abrogation changing the *qibla* from Jerusalem to the Ka'ba by His statement, تعالى, "... *Turn your face toward the Sacred Mosque. . . .*"[16] In sum, the Muslim *ummah* has agreed upon the application of the term *abrogation* in *Sharî'a*.

If it is said: *Abrogation* means copying what is in the Preserved Tablet on the tablet of messengers and prophets, and this has the connotation of copying or transcribing the Book.

We shall say: Our *Sharî'a* then is abrogated like the *Sharî'as* preceding us! But this expression is, by consensus, heres. How

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[15]Qur'ân, 68:12.

[16]Qur'ân, 2:149.

could this be, while we have been changed from one *qibla* to another *qibla* and from one *'idda*[17] period to another? Therefore, abrogation is decisively a *change*, a *substitution*, and an *elimination*.

Section Three of this Chapter: Discussions Stemming from the Examination of the Essence of Abrogation—Six discussions

I. DISCUSSION: The abrogation of a command is permissible, in our view, even before the ability to obey it [exists], contrary to the Mu'tazilites.

Its form is, for example, when the Lawgiver says in the month of *Ramadân*, "Perform pilgrimage in this year." Then, before the ninth day of *Dhul Hijjah*, He says, "Do not perform pilgrimage because I have abrogated this command for you." Also, He said, "Sacrifice your son." So he [Prophet Abraham] hastened to prepare means for it. But then He said before the sacrifice, "Don't sacrifice [him] because I have abrogated the command for you." For abrogation, in our view, is obliterating the command, that is, the effect of the command and its meaning.

Nor is it an explanation for excluding the abrogated [portion of] the expression of the command, unlike specification. For if He says, "Pray everlastingly!" then it is permissible for Him—even after a year—to abrogate the obligatoriness of the prayers for the future,

[17]This refers to the waiting period of a woman after the death of her husband, which is four months and ten days; or divorce, which last through three menstrual periods. See Qal'ajî, *Mu'jam Lughat al-Fuqahâ'*, p. 439.

not in the sense that He did not intend by the first expression to indicate all time; rather, He meant the elimination of the effect of the expression after its [intended] continuance, since its continuance is conditioned on the absence of abrogation.

Furthermore, each command includes a condition that it not be abrogated, as if saying, "Pray everlastingly, as long as I do not prohibit you or abrogate My command from you." If this is the case, then it is comprehensible for the abrogation of pilgrimage to appear before the tenth of *Dhul Ḫijjah* and the abrogation of the sacrifice before it is performed; for a command exists prior to ability, even though it is a command conditional upon ability, since commanding the condition is established.

It is for this reason that the commanded person knows he is being commanded before being able [to comply]. But since the Mu'tazilites did not understand this, they denied the establishment of commands with a condition. The discussion of the wrongness of their opinion will follow in the Book of Commands. The closest proof of its incorrectness, however, is that a person praying determines to pray an obligatory prayer and to obey the command at the commencement of the prayer. Yet he may die during it or before he is able to complete it. But if he died before [completion], it would not be clear that he was not commanded. Rather, we say that he was obliged by a command stipulated /1:113/ by a condition. This command stipulated by a condition is established immediately, whether the condition exists or not. But they say that if the condition does not exist, we know that the command was never established from the beginning, but we [the Mu'tazilites]

mistook its obligatoriness. Yet it became clear that it was not. So this question stems from the preceding one.

This is why the Mu'tazilites hold abrogation to be impossible prior to ability. They also say that it leads to a situation where one thing at one time and in one respect becomes commanded and prohibited, good and evil, undesirable and desirable, and useful and corrupting. But all that relates to good and evil and benefit and corruption, we have already refuted.

However, there remains for them two grounds [for argument]:

First, how could one thing at one time and in one respect be both prohibited and commanded?

There are two ways to answer this. One is that we do not submit to the fact that it is prohibited in the same respect as it is commanded. Rather, it is commanded in two respects: For example, prayer is prohibited while in the state of impurity, but commanded in the state of purity, as it is with prohibiting prostration to an idol while commanding prostration to Allâh, عز و جل. For they are of two distinct aspects.

Again, they disagree about the way the two aspects differ. Some have said that [an act] is commanded on the condition that when the command is eliminated it becomes prohibited. So the [aspects] are two different cases. Others have substituted the clause *the command's continuance* with *the nonexistence of prohibition* or *the nonexistence of impediments*; the expressions are close.

Some people have said that a person is commanded to act at a specified time on the condition that he chooses to act or is determined [to act], and is only prohibited from it if it is known

that he cannot choose it. They attribute the occurrence of this in the knowledge of Allâh, تعالى, to its being conditional to abrogation.

Some have said that He commands on the condition of the command being beneficiary and that it is only beneficial for the duration of the command. But after the prohibition, it is no longer beneficial.

Still others have said that He only commands when it is beneficial. But when the circumstances change, what is prohibited becomes beneficial. However, Allâh, تعالى, orders it knowing that commanding it is beneficial for the duration of the command. But after the prohibition, it is no longer beneficial. However, some people have said that Allâh orders it knowing that the contexts are [subject to] change and that its performance is determined for the locus of obligation on the condition that its benefit remains.

All of these [arguments] are close but weak. For a condition is not conceived of as being existent or nonexistent. So there is no sense in making the inevitable conditional. Moreover, what is commanded cannot occur as such except within the duration of the command and in the absence of prohibition. Therefore, how could He say, "I command you on the condition that I do not prohibit you." It is like saying, "I command you on the condition that I command you," provided that the command is not related to the one who is commanded; and on the condition that the commanded act be either incidental, originated, or some other inevitability, for this is not suitable for conditionality.

But it is not like praying with impurity or prostrating before an idol because [these acts] are capable of being divided. [For]

those who prefer this way, a more comprehensive expression for them to say is, "As for commanding something before its time, it is permissible for its effect to remain applicable on the commanded [person] until its appointed time. Also, it is permissible for the effect of its command to be eliminated before its appointed time." Thus, it is permissible that the continuance of its effect be made a condition of the command. For it can be said, "Do what I have commanded you as long as the effect of my command to you is not obliterated by a prohibition." /1:114/ Thus, when he prohibits it, the effect of the command will be eliminated. It is not, then, prohibited in the same way that He has commanded it.

The **second** ground [for argument] is that we do not deem it necessary to reveal the differences in the aspects [of a command]. But we say that it is possible for Him to state, "As for what We have commanded you to perform in one respect, We thus prohibit you from this act in the same respect." This is not impossible. For the commanded [act] is not good per se or by an inherent peculiarity present before the command which would render it contradictory. Nor does the willing or unwilling of the command render it contradictory. Rather, all of these are principles of the Mu'tazilites, which we have refuted.

If it is said: If Allâh, تعالى, knows that He is going to prohibit something, what is the sense of Him commanding what He decisively knows will be annulled, since He knows the outcome of all events?

We shall say: This is not true if the outcome of His command

is known to the commanded person. But if it is unknown to the commanded person and known only to the Commander, then the command is possible in order to test him for his determination and preoccupation with being ready [to obey], thus preventing him from various kinds of amusements and corruptions, in order that he be liable through his determination to reward, or in abandoning it, to punishment. This may contain Grace and reclamation for a person. Its examination will come in the Book of Commandments.[18]

What is astonishing, however, is the Mu'tazilites' denial of the establishment of a command with a condition while they themselves have held it permissible for promises to be conditional on the part of one who knows the outcome of affairs. Furthermore, they have stated that the promise of Allâh, تعالى, to give reward for obedience is conditional on the nonexistence of what nullifies it, such as sinfulness or apostasy, and that the punishment for disobedience is conditional on it being void of that which atones for it, such as repentance.

But, Allâh, تعالى, knows the outcome of the affairs of whoever dies, whether in apostasy or repentance. Yet He has made this conditional with His promise. So why is it impossible for a condition to be attached to His commands and prohibitions, though its conditionality is in relation to a servant who does not know the outcome of affairs? He may say, "I shall reward you for your obedience as long as you do not nullify it by apostasy," while He knows whether or not he will nullify it. Similarly, He may say, "I

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[18] *al-Mustaṣfâ*, 2:15-24.

command you on the condition that you remain [alive] and have ability, and on the condition that I do not abrogate it for you."

The second way [of replying] concerns the impossibility of abrogation before the ability [to obey], as in their statement, "Command and prohibition, according to you [Ash'arites], is the eternal speech of Allâh, تعالى. How then can the one statement be commanding and prohibiting the same thing at the same time? Furthermore, how can the eliminating [verse] and the eliminated one be the same, considering that the abrogating [command] and the abrogated one are both the speech of Allâh, تعالى?"

We shall say: This indicates two controversies. **One** of them concerns the nature of the unicity of the speech of Allâh, تعالى. But that issue is not confined to this question. Rather, according to us, this is similar to their statement that "knowledgeableness" is one state which subsumes knowing the infinity of details. This controversy can be clarified only in theology.

As for the **second** controversy, it is that of His speech being one, commanding something and prohibiting it [simultaneously]. If the locus of obligation were to know this at one time, then it is inconceivable that he would believe [in its] obligatoriness and be determined to fulfill [it]; nor would this be worthier to him than believing in its prohibition and being determined to abandon it.

So we shall say: The speech of Allâh, تعالى, is in itself one. But it is in relation to one thing a command and in relation to another thing, a predicate. But testing by it is conceivable only when the locus of obligation has heard both of these at two different times.

This is the reason we require a delay for abrogation, while if he heard both at the same time it becomes impossible. /1:115/

As for Jibrîl, عليه السلام, it is possible for him to hear it at one time since he is not a locus of obligation. Moreover, he conveys it to the Messenger of Allâh, صلى الله عليه وسلم, at two different times only if the Messenger is included in the command. But if he is not, then it may be conveyed to him at one time. Yet he is ordered to convey [them] to the *ummah* at two times. So he orders them, generally, to make peace and abandon fighting the unbelievers and generally to face Jerusalem in all prayers, and then prohibits them from this afterward. Thus, he severs the standing rule of the general command from them, just as he severs the standing rule of a contract by annulment

Some of our fellows [i.e. Ash'arites] say that a command does not become a command before reaching the commanded person. Therefore, it is not a command and a prohibition in the same situation, but in two [different] situations. This also eliminates inconsistencies and refutes it.

Thus, the decisive proof that it is possible in revealed authority is the story of Abraham, عليه السلام, namely, the abrogation of [the command to] sacrificing his son before [his] performance [of the act], and the statement of Allâh, تعالى, "*We ransomed him [Ismâ'îl] with a great sacrifice.*"[19] So he was commanded with one act and did not neglect hastening and submitting [to obey]; then it was abrogated. This is difficult for the Mu'tazilites to comprehend,

[19]Qur'ân 37:107.

to the extent that they arbitrarily interpret it and are divided into different groups.

They sought to resolve this in five ways. The **first** of which is [holding] that this was a dream [of Abraham], not a command.

The **second** is that he was commanded; but it was intended to oblige him with [only] the determination to perform the act in order to test his heart for patience in determination. Thus slaughtering was not commanded per se.

The **third** is that the command was not abrogated, but Allâh, تعالى, changed [Ismâ'îl's] neck into copper or iron so that it was not cut. Thus, the obligation was terminated because of the impossibility [to fulfill it].

The **fourth** concerns disputing what has been commanded, which was to throw him down on his forehead, passing the knife without actual slaughtering.

The **fifth** is rejecting abrogation and saying that he slaughtered him obediently, then it [his neck] was rejoined and healed. Those who hold this interpretation agree that Ismâ'îl was not slaughtered. But they differ with regard to Abraham being the slaughterer. Some have said that he was the slaughterer for he did cut [him], while the son was not slaughtered because of the healing. Others have said that being a slaughterer without a slaughtered object is impossible.

All of this is abusive and artificial.

As for the **first**, namely that it was a dream, the dreams of prophets are part of prophethood; they came to know the commands of Allâh, تعالى, through them. Indeed, the prophecy of

various prophets was solely through dreams. What indicates his comprehension of His command is the statement of his son, "*Do as you have been commanded.*"[20] If he [Abraham] had not been so commanded, he [Ismâ'îl] would be a liar. Also, intending to slaughter and to throw [his son] down on [his] face is not possible on the basis of an unfounded dream. Furthermore, He has called it "*a manifest trial.*"[21] And what trial is there in a dream? And what is the sense of sacrifice?

As for the **second**, namely that he [Abraham] was commanded in order to test his determination, this is impossible because He who knows the unseen is not in need of testing. Also, since testing occurs only through obligation, then if obligation does not exist, testing does not occur. Moreover, their statement, "Determination is the obligation," is absurd because determination [to obey] what is not obligatory is not mandatory [in itself], for it follows the [rule] of the determined object; and determination is not obligatory as long as one does not believe in the obligatoriness of the determined object.

Even if the determined object was not mandatory, then Abraham, عليه السلام, would have been more deserving to know this than the Mu'tazilites. Why should it not be so when he [Abraham], said, " . . . *I saw in a dream that I shall sacrifice you.*" And so his son said to him, "*Do as you have been commanded,*" meaning

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[20]Qur'ân 37:102.

[21]Qur'ân 37:106.

slaughtering. Also, His saying, تعالى, /1:116/ " . . . *He threw him down on his face*," is surrendering to the action of slaughtering, not to determination.

As for the **third**, namely that laying down and nothing more than it is what is commanded, this is absurd. For this cannot be called sacrificing, nor is it an affliction. Nor does it need sacrifice after obedience

As for the **fourth**—denial of abrogation and that he [Abraham] had obeyed, but his [Ismâ'îl's] neck turned to iron, thus it was beyond [his] ability, terminating the obligation—this is incorrect according to their principles. For commanding what is conditional is not established according to them. Rather, since Allâh, تعالى, knew that He will turn his [Ismâ'îl's] neck into iron, He would not, therefore, be commanding that which He knows its impossibility and will not need ransom. Thus, it would not be an affliction on his part.

As for the **fifth**, namely that he did [sacrifice Ismâ'îl], but it healed, this is absurd because how could ransom be needed after the healing? And if this were true, this would have been known and become one of His manifest signs. Yet this has never been reported. Rather, it is just an invention on the part of the Mu'tazilites.

If it is said: Did He not say, "*You have already fulfilled the vision*"?[22]

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[22]Qur'ân, 37:105.

We shall say: It means, "You have performed in the [command's] first parts a performance that only a believer in the vision does." But attesting is different than realization and performance.

II. DISCUSSION: [This Concerns] whenever part of a rite of worship [*'ibâda*], or its condition, or one of its recommended *Sunnas*[23] is abrogated—such as omitting two *rak'as* from four, or omitting the condition of ritual *purity* [for prayer].

Some people have said that it is an abrogation of a part of a rite of worship, not of its foundation. Others have said that it is an abrogation of the foundation of the rite of worship. Still others have said that abrogating a condition is not an abrogation of the foundation, while abrogating a *part* is an abrogation of its foundation. They did not allow calling a condition [of a rite] a part [of it]. But some of them did call it [as such].

To shed light on this issue, in our view, is to say that if He obliged four *rak'as* then restricted them to two *rak'as*, He then abrogated the foundation of the rite of worship. For the essence of abrogation is removal and change. Now certainly the rule [characterizing] the four [*rak'as*] was that of obligation. Then its obligatoriness was abrogated entirely. The two *rak'as* are a different rite of worship. They are not [to be considered] part of the four. For if they were part of them, then he who prays four for

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[23] The term '*Sunna*' here means the nonobligatory parts of a rite of worship.

the morning prayer would be fulfilling the obligation and more, as if he has prayed with two *taslimas*,[24] or as when a *dirham* is obligatory on a person [for charity] and then [he] gives two.

If it is said: If He reduces the four to one *rak'a*, while the one *rak'a* was already characterized as being insufficient—thus now becoming sufficient—is this then an additional abrogation besides abrogating the four [*rak'as*]?

We shall say: Considering the *rak'a* as insufficient means that its existence is the same as its nonexistence. This is basically a rational judgment that is not of the *Sharî'a*, while abrogation is obliterating what has been established by the *Sharî'a*.

So if the term abrogation means only elimination—in whatever manner and without regard to what is being eliminated—then this is abrogation. But we have explained it differently than this in the definition of abrogation. Yet, if the [condition of] ritual purity is dropped, then the obligatoriness of ritual purity is abrogated, while prayer remains an obligation. Certainly, if the status of prayer without ritual purity is such that it was insufficient, then it has now become sufficient. Still, this is changing an original [rational] rule, not a *Sharî'a* rule. For prayer without ritual purity is not sufficient because it is not commanded by the *Sharî'a*.

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[24]*Taslîma* is the salutation pronounced upon finishing the last *rak'a* of a prayer. See Lane, 4:1412.

If it is said: The validity of prayer is dependent upon ritual purity, then the dependence of its validity was abrogated by /1:117/ the *Sharî'a*. Consequently, it is an abrogation related to the rite of worship itself, and prayer with ritual purity is different from prayer without ritual purity, as three is different than four. So let this be an abrogation of a particular prayer, while obligating another one.

We shall say: This is why some people imagined that abrogating a condition of a rite of worship is similar to the abrogation of a part [of it]. There is no doubt that if He had obligated prayer without ritual purity, then it would be an abrogation of its mandatoriness with ritual purity. This, then, would be another rite of worship.

But if prayer is permitted in any case, with or without ritual purity, then prayer without ritual purity would not be sufficient because it remains under the original [rational] rule, for it was not commanded then, but is now made sufficient, and the original rule is eliminated.

As for the validity of prayer and the fact that it is dependent upon ritual purity, abrogating this dependence is an abrogation of the foundation of the rite of worship, or an abrogation of the dependence of the validity [of prayer upon ritual purity], or [abrogation] of the significance of conditionality. But this is an open question and an insignificant issue. There is no great benefit associated with it.

But regarding one of its parts prescribed as *Sunna* [i.e. nonobligatory] upon which sufficiency is not dependent—such as

standing to the right of the *imâm* or covering the head—then there is no doubt that this does not expose the rite of worship to abrogation. Therefore, reducing the scope of the rite of worship is an abrogation of its foundation, while the reduction of the *Sunna* aspects does not expose a rite of worship [to abrogation]. Also, there is dispute about the reduction of a condition; but when investigated, it appears more appropriate to attach it to the reduction of the scope of a rite of worship.

III. DISCUSSION: An addition to the text is an abrogation according to some people, but it is not according to others. To us, analysis [of the issue] is preferable. Therefore, we say that one should examine the relationship of an addition [*ziyâda*] with the recipient [*al-mazîd 'alayhi*].

This has three ranks:

The **first** is knowing that [the addition] is not related to [the recipient], as in the case when He obligates prayer and fasting and then obliges alms and pilgrimage. In such a case, the rule of the recipient does not change since its obligatoriness and sufficiency remain, while abrogation either eliminates a rule or changes it. But [here] it was not eliminated.

The **second** rank, which is furthest from the first, is when the addition is attached to the recipient in a unified manner that eliminates diversity and separation. For example, if two *rak'as* are added to the morning prayer, this is then abrogation, since the status of the [original] two *rak'as* was sufficient and valid; but this has been eliminated. Surely the obligation of the four [*rak'as*] has

been initiated and was not obligatory. But this is not abrogation because what has been eliminated is the original [rational] rule, not the *Sharî'a* rule.

If it is said: The four *rak'as* include the two and more; therefore, they are fixed, not eliminated, and the two *rak'as* were added to them.

We shall say: Abrogation is obliterating the standing rule, not eliminating the subject of the rule. As for the status of the two *rak'as*, they were sufficient and valid; but this has been eliminated. Why should it not be so, while we have explained that four is not three plus more.[25] Rather, it is a different kind. For if it were the same, then five would equal four and more. Thus, it necessarily follows that whoever prays five [*rak'as*], this should be sufficient. But know one holds this.

The third rank, which is between the two ranks, is the addition of twenty flogs to the [prescribed] eighty flogs for false accusation [of fornication].[26] But [in this case] the separation of this addition is not like separating fasting and prayer; nor is their

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[25]Ghazâlî here uses the term '*ziyâda*,' meaning *addition* or *more*. Because of its vagueness, what is *more* could be one, two, three, four, etc. In the case of prayer, performing three *rak'as* then separately performing one is *not* equivalent to the prescribed four; therefore it is insufficient.

[26]For the definition of '*qadhf*' (false accusation of fornication) and its details, see al-Zahîlî, *al-Fiqh al-Islâmî wa Adillatuhu*, 6:69-91.

connection similar to the connection between the *rak'as*.

Abû Hanîfa, رحمه الله, said that it is abrogation. But this is not correct. Rather, it resembles separation because the obligatoriness and sufficiency of the eighty lashes per se was annulled. But an addition to it was made an obligation simultaneously with the continuance [of the eighty]. Thus the hundred [lashes] is eighty and more. /1:118/ Because of this, the sufficiency of the eighty is not annulled by adding on to them, contrary to [the case of] prayer. The issue, with us, is used to permit the establishment of the punishment [of expulsion] based on a solitary report, and prohibiting it according to them [Hanifites].[27] For the Qur'ân cannot be abrogated by a solitary report.

If it is said: The eighty [lashes] was considered complete punishment, and, therefore, abrogating the quality of being complete is necessarily an elimination of its rule.

We shall say: It is elimination, but this is not intended to be a *Sharî'a* rule. Rather, what is intended is its existence and sufficiency. Indeed, it remained as it was. So, if one establishes that it is intended to be a *Sharî'a* rule, then its abrogation would be impossible by way of a solitary report. Rather, it is as if the *Sharî'a* obligates only prayer. So whoever performs it, he would be fully executing the entirety of what Allâh, تعالى, has obliged him to do. If

[27]For more details about the Hanafite and the Shâfi'ite opinions on whether or not the punishment of *taghrîb* (expulsion) should be added to flogging, see al-Zahîlî, *al-Fiqh al-Islâmî wa Adillatuhu*, 6:38-40.

He then makes fasting an obligation, prayer would not be considered the entirety of obligations. But this is not an intended rule.

If it is said: It is abrogation because of the obligatoriness of limiting [the punishment] to eighty [lashes], since obligating eighty prevents excessiveness.

We shall say: The prevention of excess is not in an explicit [statement], but rather an implicit one. In any case, they do not hold this [here]; nor do we. Furthermore, the elimination of what is implied is similar to specifying a general case because it is eliminating a part of what the expression requires. So it is possible based on a solitary report. Moreover, this can be considered sound only if it is established that the implied rule has come and been fixed, and then [the punishment] of expulsion came afterward. Yet there is no way of knowing this. Rather, it may have come in explaination for eliminating the implied [expression] attached or close to it.

If it is said: The pronouncing of [someone] as unrighteous and the rejection of [a person's] testimony is related to the eighty [lashes]. But when the [lashes] are exceeded, the attachment [of the rule] to it is eliminated.

We shall say: Pronouncing [someone] unrighteous and rejecting testimony is related to false accusation, not to the [*Sharî'a*] punishment. Were we to concede, then this would be a rule adherent to the punishment, not the intended one. It would be like

the lawfulness of marriage after an elapse of four months and ten days, as pertaining to the *'idda* of death [for the widdow], and the disposition of the *Sharî'a* toward *'idda* in reducing it from one year to four months and ten days. This is not disposing of the lawfulness of marriage, but rather the *'idda* itself. For marriage is dependent [upon it].

If it is said: If it is commanded generally to pray, then the condition of ritual purity is added, is this then an abrogation?

We shall say: Yes. For the standing rule of the first [command] was that prayer is sufficient without ritual purity; then its sufficiency was abrogated and was commanded with ritual purity.

If it is said: Then it is incumbent upon you to hold that circumambulation [around the Ka'ba] by one who is not ritually pure is sufficient because He, تعالى, said, ". . . *And let them circumambulate the Ancient House.*"[28] But He did not require ritual purity, while al-Shâfi'î, رحمه الله, prohibited its sufficiency due to his saying, صلى الله عليه وسلم, "Circumambulating the House is [like] prayer."[29] Yet this is a solitary report. Abû Hanîfah, رحمه الله, concluded that this report effects the obligatoriness of ritual purity. As for voiding circumambulation and its sufficiency, which is

[28]Qur'ân, 22:29.

[29]For the various sources and versions of this *hadîth*, see Wensinck, *Concordance*, 4:50-51.

known by the Book, it does not [void it].

We shall say: If the general intent in the Book is fixed and it requires the sufficiency of circumambulating without ritual purity or with ritual purity, then requiring ritual purity is elimination and abrogation, which is not allowed based on a solitary report. However, His statement, تعالى, "... *And let them circumambulate the Ancient House*," is possible to be a command for the basis of circumambulation. However, clarifying its conditions was left to the Messenger, عليه السلام. Thus his statement is regarded as an explanation and specification of the general [case], not an abrogation. For it is an omission of the text, not an addition to it because the generality [of the text] necessitates sufficiency of circumambulation, with ritual purity or without it.

So a /1:119/ solitary report has excluded one of the two implications of the expressions of the Qur'ân. Thus, it is an omission from the text, not an addition to it. Yet it is possible for it to be an elimination, if the general [command] is decisively fixed, or an explanation, if it is not fixed. But there is no sense to claim that it is fixed arbitrarily

This is similar to His statement, تعالى, "... *And let him free a slave* ...,"[30] for it includes the believer and the unbeliever. So it is possible to specify the general since the verse may have been intended to relate the basis of atonement, and it would be a command on the basis of atonement without its restrictions and conditions. Therefore, if the [command's] generality becomes fixed

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[30]See Qur'ân, 58:3. In 4:92, *slave* is qualified as a believer.

and decisiveness accrues indicating that the generality is intended, then its abrogation and elimination would be impossible through *qiyâs* or by solitary report.

If it is said: What do you say concerning the permissibility of wiping over one's *khuff*?[31] Is it an abrogation of washing the two feet?

We shall say: It is not an abrogation of its sufficiency, nor of its obligatoriness. But it is an abrogation of the restrictiveness of its obligatoriness, thus specifying it and making it one of the two obligations. It is possible for it to be established based on a solitary report.

If it is said: The Book has obligated washing both feet, restrictively.

We shall say: Its restrictiveness remains on the part of he who did not wear *khuffs* in ritual purity, and excluded from its generality he who wore *khuffs* in ritual purity, that is, for the duration of three days, or a day and a night.

If it is said: His saying, تعالى, "*. . . And call to witness from among your men, two witnesses . . .*"[32] The verse requires the arrest of judgement [contingent] upon two witnesses. So when one

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[31]A pair of shoes, slippers of light leather without heels; pl. *akhfâff*.

[32]Qur'ân, 2:282.

judges based on a witness and an oath established by a solitary report, then the arrest of judgement is lifted. Is this, then, abrogation?

We shall say: It is not like this, for the verse does not necessitate other than the two witnesses for evidence and the permissiblity of judging based on their statement. As for disallowing judgement by other evidence, it is not in the verse. Rather, it is like judgement based on confession. Furthermore, the mention of one bit of evidence does not prevent the existence of another bit of evidence.

Their statement that the apparent meaning of the verse is that there is no evidence other than [the two witnesses] is not so because this is not the literal meaning of the text. According to them, there is no proof in what is implicit. Even if there were, then the removal of what is implied is removing part of what the expression requires. But all of this [may be so], if the implied is fixed and [what is] established is conceded. Also, the report of a witness with an oath has occurred after it. But all of this is not conceded.

IV. DISCUSSION: It is not a condition of abrogation to establish a substitute for what is abrogated. Some people have said that this is impossible.

So we shall ask: Is this impossible on rational grounds or [according to] revealed authority?

Its possibility is not rationally inconceivable, since if it were impossible, its impossibility would be due to either its form,

opposition to the public's welfare, or some underlying reason. Yet it is not impossible due to form, for He may say, "I have made fighting obligatory for you"; and [then] "I have abrogated it for you, returning you to what was before, concerning the original rule."

Nor is it impossible on the basis of public benefit, for the *Sharî'a* is not founded on this. But even if it is so founded, it is not unlikely that the public benefit is in eliminating the [rule] without establishing a substitute.

Now, if they disallow its possibility on the basis of revealed authority, this, then, would be arbitrary. Yet the prohibition from saving the meat of sacrificed animals was abrogated, and the requirement of paying charity before having private counsel [with the Prophet] was abrogated—and it had no substitute. However, the *qibla* was abrogated by a substitute and the testament of [granting possessions] to relatives was [abrogated] by a substitute, and there are other examples.

The essence of abrogation is solely elimination. As for His saying, نأت, "*For whatever verse We abrogate or cause to be forgotten, We shall bring the better or the like of it.*" If they adhere to this as [evidence], this can be answered in several ways.

First, this does not bar the possibility [of abrogation without substitue] even though it denies its existence, even to whoever holds the general case [to be fixed]. But for those who do not adhere to this, it does not oblige them at all. But even for those who hold this position, it does not necessarily follow that it [abrogation] is only possible with a substitute in all situations. /1:120/ Rather, [the general case] is subject to specifications based

on the proofs of the sacrificial animals and [giving] alms before private counsel [with the Prophet].

Furthermore, it appears [from the verse] that He meant that abrogating a verse by a similar verse does not imply that abrogation means only the elimination of the abrogated. It could mean other things in conjunction with this. All of this is possible.

V. DISCUSSION: Some people have said that abrogation is possible only by [a rule] that is less burdensome but not by one that would be more burdensome.

We shall say: With reference to the impossibility of abrogation by that which is more burdensome, do you know this on the basis of reason or *Sharî'a*? For it is not rationally impossible, since it is neither deniable per se nor deniable based on public welfare. For we deny it.[33] Even if we accept it [the argument of public good], why is it not possible that the public good be [pursued] in the upgrading and elevation of what is less burdensome to what is more burdensome, as was so with the public good at the beginning of the divine obligation and the elimination the original state of rules.

If it is said: Allâh, تعالى, is gracious and merciful to His creatures and rigidity is not suitable for Him.

We shall say: It follows necessarily, then, that initiating

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[33]Ghazâlî disputes the validity of *istiṣlâḥ* (public good) as a source of law. See his discussion in *al-Mustaṣfâ*, 1:284-315.

divine obligation or afflicting illness, poverty, and various sufferings upon people is not suitable for Him.

If it is said: It is impossible on the basis of revealed authority according to His saying, تعالى, "*Allâh desires ease for you and desires not hardship for you,*"[34] and His statement, تعالى, "*And Allâh desires to lighten things for you.*"[35]

We shall say: It necessarily follows, then, that He must leave them [in a state] of permission to do [or not to do]; for there is ease in this. Moreover, He must not abrogate [anything] with its like, for there is no ease in this, since there is only ease in eliminating [a rule] either without substitute or with what is easier.

On the contrary, these verses were [revealed] for special cases intended to ease. There is nothing in them that prevents the intention of [establishing] what is burdensome and rigid.

If it is said: He has said, "*And whatever verse We abrogate or caused to be forgotten,We bring one better or its like . . .*" This *better* is universal, and good is what is beneficial to us. Otherwise, the entire Qur'ân is good. But what is good for us is what is less burdensome.

We shall say: This is not the case. Rather, *better* is what is more rewarding and more beneficial to us in the Hereafter,

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[34]Qur'ân, 2:185.

[35]Qur'ân, 4:28.

although it is more burdensome in the present condition.

If it is said: This is not impossible rationally; but it is so on the basis of revealed authority, for abrogation by that which is more burdensome is not found in the *Sharî'a*.

We shall say: This is not so because the Companions were commanded to abandon fighting and avoid it at first, then [were commanded] with a declaration to fight, along with hardship, [such as] requiring one to stand firm against ten. Similarly, the choice between fasting or compensation with food was abrogated by specifying fasting, which is a restriction. Alcohol, temporary marriage, and [eating] domesticated asses[36] were prohibited 'after' they had been unrestricted. Again, the permissibility of delaying prayer out of fear was abrogated and then mandated during fighting. In addition, fasting the tenth day [of *Muharram*] was [abrogated] by the fasting of *Ramadân*. Prayer, according to some people, was two *rak'as* and was then abrogated by four when one is at home.

VI. DISCUSSION: They disputed abrogation with regard to a person who has not received [its] report.

Some people have said that abrogation has occurred with respect to him though he is unaware of it. Others have said that what has not reached a person is not an abrogation for him.

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[36]For various *fiqhî* opinions on the lawful and unlawful animals, see al-Zahîlî, *al-Fiqh al-Islâmî wa Adillatuhu*, 3:506-513.

The preferred opinion is that abrogation has an essence, that is, obliterating the previous rule. It has an effect, namely, the obligatoriness of *qaḏâ'* [belated performance of an obligation] and the nullification of what used to be sufficient for the previous act.

As for its essence, which is eliminating the command, it is not established for anyone whom it did not reach. For whosoever was commanded to face Jerusalem [should have done so]; but when the abrogation to [face] Mecca [was revealed], the [previous] command was not immediately void for one who was, say, in Yemen. In fact, he would be commanded to hold to the previous command. /1:121/ If he abandons it, he would be sinning even though it is discovered that it was abrogated. He is not obliged to face the Ka'ba. Indeed, if he had faced it, he would be sinning. There is no way for this to be disputed.

As for the necessity of *qaḏâ'* for prayer when abrogation is known, this is acknowledged by either the proof of the text or *qiyâs*. Also, it may be that an act of *qaḏâ'* becomes obligatory, where an act of *adâ'* [timely performance] is not obliged. Such is the case with a menstruating woman; if she fasts, she is sinning, though *qaḏâ'* is obligatory for her.

Similarly, it is permissible to say about a person that if he faces the Ka'ba, he is sinning; and in his act of *qaḏâ'*, he is obligated to face it, just as we say, concerning a person who is sleeping or unconscious [while an obligation is revealed], when they are awake and alert they are obligated to perform *qaḏâ'* for what was not obligatory for them [previously]. For one who cannot discern is not addressable.

If it is said: When he knows of the abrogation, does he abandon the *qibla* on the basis of abrogation or on the basis of his knowledge of the abrogation? For mere cognition has no effect; thus indicating that the rule has been terminated by the revelation of the abrogating [command]. Although he was unaware of it, he is in error; yet he is excused.

We shall say: The abrogating [command] is the eliminator; but knowledge is a condition. Upon the occurrence of the condition, the abrogating [command] is referred to. However, there is no abrogation before the existence of the condition, for the abrogating [command] is an address. Yet it cannot become so for those whom it did not reach.

Their statement, "He is in error," is absurd because the term *error* is applied to whoever seeks something but misses it or to whoever is obligated to seek something but neglects it. But nothing of this is substantiated in the domain of controversy.

CHAPTER TWO: THE ESSENTIAL CONSTITUENTS OF THE DOCTRINE OF ABROGATION AND ITS CONDITIONS

This comprises an introduction which deals with the comprehensive, essential constituents and conditions. It further comprises certain discussions which follow from the rules of abrogation. As for the introduction, know that the essential constituents of abrogation are four: The abrogation, the

abrogator,[37] the abrogated, and those who something is abrogated for.

Since the essence of abrogation is the elimination of a rule, the Abrogator, then, is Allâh, تعالى, Himself, for it is He who is the Eliminator of the rule. That which is abrogated is the eliminated rule, and those from whom it is eliminated are the worshippers, the loci of obligation. Abrogation resides in His statement indicating the elimination of the standing rule.

However, the text [*dalîl*] may be called, figuratively, an 'abrogator.' Thus, it is said, " 'This' verse abrogates 'that' one." Thus, the *hukm*, may also be figuratively called an 'abrogator.' Therefore, it can be said that the fasting of *Ramadân* abrogates the fasting of the tenth day of *Muharram*. But the actual meaning is the previous one because abrogation is elimination, and Allâh, تعالى, is the Eliminator for establishing the proof that indicates obliteration and through His statement which manifests it.

As for the comprehensive conditions [of abrogation], they are four:

First, that which is abrogated should be a *Sharî'a* rule, not an originally rational rule; for example, the original freedom of man is eliminated by the imposition of the rites of worship.[38].

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[37]The term *abrogator* may refer to Allâh—since He is the one actually sanctioning the abrogation—or to the verse or *hadîth* removing and replacing the prior rule. Here, if the abrogator is used in reference to Allah, *A* shall be in upper case. Otherwise, abrogator should be assumed to mean the verse or *hadîth*, i.e., the abrogating rule.

[38]*Bara'at al-Aslîya*

Second, abrogation should occur through an address. Thus the obliteration of a rule caused by the death of the locus of obligation is not called abrogation, for that which eliminates, in this case, is not an address eliminating the rule of a previous address. Rather, it is said in the first place, "This rule is imposed upon you as long as you are alive." Therefore, the imposition of a rule is confined to the life [of a person], so it does not need elimination.

Third, the rule of the removed address should not be restricted to a time whose entrance requires the removal of the rule, as in the saying of Allâh, تعالى , ". . . *Then complete your fast until night . . .*"[39]

Fourth, the abrogating address should occur after the first one, not as in the statement of Allâh, تعالى , ". . . *Do not approach them until they are clean . . .*";[40] and His saying, ". . . *Until they pay* jizya *[pole tax] from their hands [and are] subdued.*"[41]

The following nine conditions are not required for abrogation:

First, it is not required to replace something with something else identical to it, but only with what eliminates it.

Second, it is not required that abrogation occur after the time when the abrogated [rule] has comes. Rather, it is permissible

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[39]Qur'ân, 2:187.

[40]Qur'ân, 2:222.

[41]Qur'ân, 9:29.

before the time of its arrival.

Third, it is not required that the abrogated [rule] be affected by exceptions and specifications. Rather, the arrival of abrogation is permissible upon a lone command to do a single action at one time.

Fourth, it is not required that the Qur'ân be abrogated by the Qur'ân and the *Sunna* by the *Sunna*. Therefore, belonging to the same genre is not required. It is enough that it be something capable of sound abrogation.

Fifth, it is not required that they [the abrogating and abrogated texts] be clearly decisive texts; for it is permissible to abrogate a solitary transmission through a similar or *mutawâtir* transmission, even though it is not permissible to abrogate a *mutawâtir* transmission with a solitary one.

Sixth, it is not required for the abrogating [text] to be transmitted in words similar to those of the abrogated one. Rather, it can be established by any means, for facing Jerusalem [during prayer] has not been transmitted to us through either the Qur'ân or the *Sunna*, but its abrogator is an explicit text in the Qur'ân.

Similarly, a rule that has been expressly stated [in *Sharî'a*] may be abrogated by the *ijtihâd* of the Prophet, صلى الله عليه وسلم, or his own *qiyâs*, even if they have not been established through a text that has a mood and form, which would require transmission.

Seventh, it is not required for the abrogating [text] to be contrary to the abrogated, such that a command could not be abrogated except by a prohibition, nor a prohibition except by a command. Rather, it is possible that both be abrogated by, say, a

[text] of permission . Also [not required] is that a time-restricted obligation not be abrogated except by an obligation with latitude. What *is* required is that the abrogator eliminates a rule arising from that which is abrogated in whatever way possible.

Eighth, it is not required that the two [the abrogated and abrogator] be established [that is, in sequence] only through a text. Rather, it can be done by the implied, assumed, or literal meaning of a statement in whatever way possible. The proof of this is when the Prophet, صلى الله عليه وسلم, clarified that the verse stipulating bequest in favor of near relatives was abrogated by his statement, "Allâh, تعالى, has given each deserving person a due right in inheritance. So, beware that there is no bequest in favor of an inheritor." Although it is possible to combine both bequest and inheritance, they are not mutually contradictory.

Ninth, it is not required that a rule be abrogated only by its substitute or by that which is less burdensome than it.

Now, we shall discuss certain questions which arise out of the consideration of the two basic elements [the abrogated and the abrogating text]: Two concern the abrogated and four are in reference to that which abrogates.

I. DISCUSSION: There is no *Sharî'a* rule but it is abrogatable.

This is contrary to the view of the Mu'tazilites, who state that some acts have intrinsic characteristics that necessitate their 'goodness' or 'badness.' Therefore, their abrogation is not possible. For example, the knowledge that Allâh, تعالى, is just, or that there

must be gratefulness to the bestower of favors; these obligations cannot be abrogated. Furthermore, the prohibition against acts of disbelief, injustice, and lying cannot be abrogated .

Now, they built this doctrine upon their theory that reason is capable of ruling upon things as 'good' or 'bad,' and that it is 'necessary' /1:23/ for Allâh, تعالى, to do always the most salutary thing to His creatures. For this reason they laid restrictions on Allâh, تعالى, with regard to His commands and prohibitions. At times they raise this [doctrine] in [the position that] the Islam of a minor is lawfully sound, for it is necessitated by reason. Therefore, to exempt the minor from these obligations are impossible.

These are doctrines that we have refuted, and we have shown that merely entertaining the imposition of obligation upon Allâh, تعالى, is not possible—whether or not the salutariness of His servants lies in it. Of course, after Allâh has bestowed obligations upon His servants, then it is not possible to abrogate all obligations, for a person cannot know abrogation if he does not know the Abrogator, that is, Allâh, عز و جل. It is necessary for the locus of obligation to know the abrogating [text] and the proof that has been established for abrogation, therefore to know this is an obligation that necessarily remains.

We concede, however, that it is not so that Allâh bestow upon them an obligation not to know Him or forbid them from knowing Him, for His statement, "I oblige you not to know Me," would in itself contain the idea of knowledge. In other words, it means "Know Me because I have made it obligatory upon you not to know Me," which is absurd. Therefore, this kind of obligation cannot be

established according to those people who do not allow for the creation of an obligation which is impossible to bear. Similarly, it is not possible that someone be obliged to know something from among the contingencies in a way that is contrary to reality, for this is impossible. And, therefore, it is neither conceivable to do nor abandon.

II. DISCUSSION: When a verse contains a rule, it is possible to abrogate its wording, even if its rule remains, just as it is possible to abrogate its rule while its wording remains. Thus, it is possible that both be abrogated.

A group of people think of this as impossible. But we say that it is possible rationally and has actually occurred in the *Sharî'a*. As for its rational permissibility, the recitation and writing of it in the Qur'ân, as well as its validation of prayer, all are its rules, just as its prohibitions or permissions, which are understood from its wording, are also its rule. These rules are then capable of being abrogated because every rule is capable of being abrogated.

Some people say that the abrogation of the recitation is essentially impossible. For if what is thereby intended is the rule, it would have been mentioned at the tongue of the Prophet, صلى الله عليه وسلم. Moreover, Allâh, تعالى, has not sent this down upon him except for the reason of its recitation and reward. So how can this be abrogated?

We shall say: What difficulty is there in the intention being simply the [imparted] rule and not the actual recitation. Indeed, it

was sent to Allâh's Prophet, صلى الله عليه وسلم, through definite wording.

If it is said: If [recitation's] abrogation is permissible, then its rule may also be abrogated, for rule follows recitation. Can what is derived remain while the original source is abrogated?

We shall say: No, since recitation has its rule. To establish prayer on its basis is another rule. Therefore, the recitation is not the original source; rather, its indicativeness is. Nor does it consist in the abrogation of its recitation.

Now, ruling that prayers are not established on its basis is an abrogation. In fact, it is an abrogation of its indicativeness, for how many proofs are there which are not recited and on the basis of which prayers are not established? This verse, then, is proof by its revelation and descent [from Allâh] for its being recited in the Qur'ân. But abrogation cannot remove its revelation and descent [from Allâh]. Nor does it render it as though it were never revealed. Rather, it brings it into a category which has been revealed but not recited. This must be so, since it is permissible that a proof may perish, while that which it proved remains; for a proof is a sign, not a cause. Once it has demonstrated the proof, then there is no harm in it perishing.

Why should it not be so, while that which necessitates rule is the eternal speech of Allâh, تعالى, which does not perish and whose elimination and abrogation cannot be conceived? So when we say that a certain verse is abrogated, we mean thereby that its connection with /1:124/ the servant has been terminated and its indication and rule is eliminated, but not its essence.

If it is said: The abrogation of a rule while the recitation of its words remain is self contradictory, for in that case the proof remains and that which it indicates is obliterated.

We shall say: It becomes a proof only when it is severed from that which eliminates it from being a rule. When a new address comes which abrogates the rule, then the condition of being a proof is eliminated. What validates its occurrence in revealed authority is the saying of the Exalted: ". . . *And upon those who can afford it, is the feeding of one poor person. . . .*" Now, while the recitation of this verse remains, its rule was abrogated when fasting became decidedly obligatory.

Also, when rendering a will in favor of one's parents or near relatives remains recited in the Qur'ân, its rule has been abrogated by [his] statement, صلى الله عليه وسلم, "There is no bequest in favor of an inheritor." In addition, before having a private audience [with the Prophet] one was to give some charity. This rule has been abrogated even though the recitation remains. Again, for a widow to wait for one year before remarrying has been abrogated, and imprisonment and punishment of those women who commit obscenities has been replaced by the punishment of flogging and lapidation, though its recitation remains [as well].

As for the abrogation of recitation, the reports are overwhelming that the recitation of the verse concerning lapidation has been abrogated though its rule remains. And this is the saying of the Exalted: "*The adult man and adult woman, when they commit adultery, stone them as a punishment from Allâh. And*

Allâh is mighty and wise." It is widely reported, on the authority of 'A'isha, رضي الله عنها, that she said, "Suckling ten [times] was originally revealed as making marriage unlawful. Then they were abrogated with five. But none of these are in the Book."

III. DISCUSSION: It is permissible that the Qur'ân be abrogated by the *Sunna* and the *Sunna* by the Qur'ân because both of them come from Allâh, عز و جل. So what prevents it? Also, why is being of the same genre not required, even though reason does not render it impossible? How is it that the traditional argument actually indicating facing Jerusalem [during prayers] is not mentioned in the Qur'ân but is in the *Sunna*, while its abrogator is in the Qur'ân? Similarly, the saying of the Exalted, "*So therefore, now have sex with them,*" abrogates banning sex during [the nights] of fasting. But that which made it unlawful is not in the Qur'ân. Similar [to this] is the abrogation of the fasting of *'Ashûrâ'* [the tenth day of *Muharram*] with the fasting of *Ramadân* , while [fasting] *'Ashûrâ'* was established on the basis of *Sunna*. Also, the prayer of fear [in war] occurred in the Qur'ân as abrogating that which was established earlier on the basis of the *Sunna*, namely that prayer [during war] could be delayed until the fighting has finished, to the extent that the [Prophet], عليه السلام, said on the day of *khandaq* [of the battle of the ditch], when he had actually delayed the prayer, "May Allâh fill their [the enemy's] graves with fire," because they kept him from praying on time. And so it is with the saying of the Exalted, "*Do not return these [women] to the unbelievers* [*i.e., the Meccans*]." This is an abrogation of what the

[the Prophet], عَلَيْهِ السَّلَام, established in the treaty [with the Meccans].

The fact that the Qur'ân can be abrogated by the *Sunna* [is illustrated] in the abrogation of rendering a will in favor of one's parents and near relatives by the the saying [of the Prophet], صَلَّى الله عَلَيْهِ وَسَلَّم, "No. There is no will in favor of the inheritor." For the verse of inheritance itself does not render it impossible to make a will in favor of ones parents or near relatives, for it is possible to combine them.

Similarly, he, صَلَّى الله عَلَيْهِ وَسَلَّم, said, "Now Allâh has opened a way for them. [When] a virgin [commits obscenity] with a virgin, [punishment] is one hundred lashings and exile for a year; and the married with the married is one hundred lashes and lapidation."[42] Now, this abrogated [the rule] confining women to their homes. This is something which is subject to discussion because he, صَلَّى الله عَلَيْهِ وَسَلَّم, made it clear that the verse of inheritance abrogated the verse of the will. But he, صَلَّى الله عَلَيْهِ وَسَلَّم, did not abrogate it himself. He also made it clear that Allâh, تَعَالَى, has made a [alternative] way for such women, which is what He had promised earlier when He said, ". . . *Or Allâh will show another way for them.*"

If it is said: Al-Shâfi'î, رَحِمَهُ الله, has said that it is not permissible to abrogate the *Sunna* by the Qur'ân, as it is not

[42]The Prophet said this in response to a verse of the Qur'ân abrogating the punishment for adultery from permanent confinement in-home to lashes or lapidation or exile. For a complete account of the *ḥadîth*, see al-Ṯabarî, *Tafsîr*, pp. 291-294.

permissible to abrogate the Qur'ân by the *Sunna*. Certainly he is above not knowing the types of abrogation. In addition, he says it as though the *Sunna* can only annul the *Sunna* because the Prophet, صلى الله عليه وسلم, [can abrogate] a *Sunna* with a *Sunna* and can clarify his own speech and the Qur'ân, while the Qur'ân cannot clarify the *Sunna*. If this is not to be found, it is because it has not been transmitted to him [the Prophet]. Otherwise, abrogation cannot take place except in this way.

We shall say: If this relates to its permissibility on the basis of reason, then it is not difficult to perceive that it is understood from the Qur'ân that the direction [during prayer] toward the Ka'ba is necessitated [by the Qur'ân], even though facing Jerusalem was established by the *Sunna*. Hence, its reverse is possible, although he used to say that this has not actually occurred. Yet we have related that it has actually occurred. Thus, we do not need to recourse to a supposition of a hidden *Sunna* which has been obliterated, for on this supposition you do not need this. But to say that this [type of abrogation] has not occurred is pure dogma. In fact, most say that this has occurred—and that is undisputed.

Our opponents use the saying of the Exalted, "*Those people who do not expect to meet Us, they say [to the Prophet], 'Bring another Qur'ân different than this or change this one.' Say, 'It is not possible for me to change it myself. I only follow that which is revealed to me.'*" This [they say] indicates that the Qur'ân cannot be abrogated by the *Sunna*.

We shall say: It is undisputed that he [the Prophet] could not

abrogate on his own. Rather, only by inspiration revealed to him [could he do so]. But it is not necessary that it should be in the text of the Qur'ân. Even though we allow that abrogation can occur by the *ijtihâd* [of the Prophet] also, the permission of *ijtihâd* comes only from Allâh, عز و جل.

Therefore, the essence of the matter is that the Abrogator is He, Allâh, عز و جل, through the tongue of the Messenger, صلى الله عليه وسلم. The point here is that it is not a condition that a rule of the Qur'ân be abrogated [only] by the Qur'ân. Rather, it can be done at the tongue of the Messenger, صلى الله عليه وسلم, through revelation that is not Qur'ânic. The speech of Allâh, تعالى, is one. It itself is the abrogator in one sense and is the abrogated in another sense. But He does not have two speeches, one being the Qur'ân , and the other not the Qur'ân. The difference being only in the expression. Perhaps He indicates His speech in a systematic text by which He orders us to recite; wherefore it is called the Qur'ân. Perhaps He may indicate it without any recited text; whence it is called *Sunna*. And all of this is heard from the Messenger, عليه السلام. But the Abrogator, in any case, is Allâh, تعالى.

When they [the unbelievers] demanded [from the Prophet] "*a Qur'ân like this Qur'ân*," he replied, "I am not capable of doing it myself." And they did not request anything else. So what relevance does this have with the abrogation of the Qur'ân by the *Sunna* and its possibility?

They [the opponents] also argue on the basis of the saying of the Exalted, "*Whatever verse We abrogate, We bring one better than it or one similar to it.*" This [verse] made it clear that a verse

cannot be abrogated except by one similar to it or one better than it. However, *Sunna* is not like this. Then He praised Himself and said, "*Do you not know that Allâh has power over all things.*" This made it clear that no one has power [of abrogation] other than He.

We shall say: We have established that Allâh, تعالى, is the Abrogator, and that it is He Who manifests it at the tongue of the Messenger, صلى الله عليه وسلم. It is He Who causes us to understand the intermediacy [of the Prophet] in the abrogation of His Book—and there is none else who can do it. Also, if Allâh, تعالى, abrogates a verse by way of the tongue of the Messenger, صلى الله عليه وسلم, and then brings another verse like it, [He] then has fulfilled His promise. But He did not make it a condition that the other verse be an abrogator of the first. So, we say that the intention is not to bring another Qur'ân better than it, for the Qur'ân cannot be described as [having a] part of it being better than another part. However you conceive [of Allâh's speech], eternal or created, it means, instead, that He would bring an act better than the earlier one because either it would be lighter than the earlier one or its reward would be greater. /1:126/

IV. DISCUSSION: *Ijmâ'* cannot be used to abrogate because there can be no abrogation after revelation was terminated. But what has been abrogated by *ijmâ'* can be indicated by consensus itself as an abrogating factor present at the time of the revelation of either the Book or the *Sunna*.

As for the *Sunna*, a *mutawâtir* report can abrogate a *mutawâtir* report, and a solitary report, a solitary report. As for

the abrogation of a *mutawâtir* report by a solitary report, they differ among themselves as to whether it has actually occurred in revealed authority or is rationally permissible.

Some people said that in revealed authority it has actually occurred because the people of the mosque of *Qubâ'* turned toward the *Ka'ba* on the word of one person who informed them [about this]. This has been established in a decisive manner. They accepted its abrogation [on the basis] of a solitary report. The preferable view, however, is that it should be regarded as permissible on the basis of reason if it is a means to worship and if it has actually occurred in the time of the Messenger of Allâh, صلى الله عليه وسلم. This is based on the the proof of the story of *Qubâ'*, and also on the proof of [the prophet's] delegating individual governors to various places, for they used to convey both the abrogating and the abrogated [rules]. But this [the latter] is impossible after [the Prophet's] death. The proof of this is the consensus of the Companions that the Qur'ân and the known *mutawâtir* [reports] cannot be eliminated by solitary report[s]. Therefore, none among the earlier generations, nor among the later ones, has held this to be permissible.

Religious practices on the basis of a solitary report have been accepted by the Companions in areas where it does not eliminate a decisive [rule]. The *Kharajites*, in fact, have held the view that the Qur'ân cannot be abrogated by a *mutawâtir* report, to the extent that they said the lapidation of Mâ'iz, although a *mutawâtir* report, is not suitable for abrogating the Qur'ân. Al-Shâfi'î, رحمه الله, said that it is not permissible for the Qur'ân to be abrogated by the *Sunna*,

even if it is a *mutawâtir* report. This is not absurd because it is possible to say, "We cast a duty upon you to abrogate on the basis of a solitary report at the time of revelation, but we make it unlawful thereafter."

If it is said: How is it permissible on the basis of reason, when a decisive [proof] is being obliterated by a conjectural one? As for the report about *Qubâ'*, it is possible that circumstantial evidence accumulated and [thus] imparted necessary knowledge.

We shall say: The assumption of indicative circumstantial evidences necessitates the annulment of solitary reports. This is like taking the practice of the Companions to be based on awareness of circumstantial evidences. But there is no way to establish what has not been transmitted.

As for their contention that this would constitute removal of something decisive by something subject to error, this is false. For if that were the case, we would have to definitely decide that the transmitter is lying. But we cannot decisively do so. Rather, we allow that he can be truthful. This is decisive proof, then, on the condition that there exists no report that can abrogate it. For if one is in the original state of freedom, this is something that is decisively known and can be removed by a solitary report, since this yields decisiveness—provided that there does not exist any solitary report.

If it is said: Why do you object to one who says decisively that such a transmitter is a liar, for the Messenger, صلى الله عليه وسلم,

promulgated the rules, and if its abrogation had been established, then it would have been incumbent [upon the Prophet] to promulgate it also?

We shall say: Why is it impossible that he should promulgate its rule but entrust its abrogation to individuals, like specifications [of a generally promulgated rule] to a particular person?

V. DISCUSSION: It is not permissible to abrogate a decisive, *mutawâtir* text on the basis of *qiyâs* or *ijtihâd*, which are known through conjecture, regardless of its rank, manifest or hidden. This has been the decisive position of the majority [of legists], except for an isolated number, who say that that which permits specifications also permits abrogation.

But this is refuted on the grounds of reason, *ijmâ'*, and solitary reports, for through all of these, specification is possible, but not abrogation. Then how can the two be equal, while specification is an explanation and abrogation is elimination? Also, explanation is elaboration, while elimination is nullification.

Some of the companions of al-Shâfi'î said that abrogation is permissible on the basis of obvious *qiyâs*.

We say that the term *obvious* is ambiguous. If they mean decisive proof, then they are correct. But if it means something conjectural, then they are not.

That which is thought to have decisive proof has three ranks:

First, that which has the same force as the texts, or is more explicit than them, as the saying of the Exalted, "*And do not say to them [your parents] even fye.*" Thus, the unlawfulness of striking

[your parents] is *a fortiori* [understood] from it. If a clear text arrived permitting the striking [of one's parents], then it would be capable of abrogating, for then it would preponderate over that which is already in [the text]. In the same rank is the saying of the Exalted, "*Whosoever does an atom's weight of good shall see it.*" This proves *a fortiori* that this is also true for that which is more than an atom. And so it is with the saying of the Exalted, "*When parents inherit [from their child], the mother receives one-third.*" Included in this is [the understanding that] the father receives two-thirds.

The second rank is such that if there were a text stating that emancipation has no effect on a female slave and then comes his statement, صلى الله عليه وسلم, "Whosoever emancipates his own share in a slave is obligated to appraise the remaining share." Thus, we would conclude that emancipation does have an effect on the female slave, for her case would be made analogous to the male slave due to the explicitness of [the male's case], since it is known decisively that the intent of the *Sharî'a* was aimed at the male slave because he is subservient.

The third rank is if there were a text, for example, allowing the consumption of *nabîdh*, but then the Lawgiver said that alcohol has been made unlawful because of its intoxiccation. The permissibility of *nabîdh* would then be abrogated based on its being analogous to alcohol, if we are obliged by the *Sharî'a* to accept *qiyâs*.

Some say that even if we are not obliged by the *Sharî'a* to [accept] *qiyâs*, we would still abrogate it. There is no difference

between his statement, "I have made all *nabîdh* unlawful," and his clear statement, "I have made alcohol unlawful because of its intoxication." It is for this reason that al-Nazzâm admitted to there being an *'illa* [underlying cause] in the text, though he denied the basis of *qiyâs*.

We must make it clear that if we were not obligated by the *Sharî'a* to use *qiyâs*, then his [the Prophet's] saying, "I have made unlawful alcohol upn you because of its intoxication," would not be conclusive proof for the prohibition of *nabîdh*. Rather, it is permissible that the *'illa* of prohibition be particularly the intoxication of the alcohol, just as the *'illa* of lapidation of an adulterer is particularly [the state of] being married. In summary, something decisive cannot be eliminated by something conjectural, but by [what is] decisive.

If it is said: Is the impossibility of it being eliminated by conjecture based on reason or revealed authority?

We shall say: The correct [answer] is revealed authority. But it is not impossible to say on a rational basis that we have laid a *Sharî'a* obligation upon you to abrogate one text on the basis of *qiyâs*, which is based on another text. Of course, it is impossible that we be obligated by the *Sharî'a* to abrogate a text on the basis of *qiyâs*, which is deduced from that very text itself, since this would lead to self contradiction. Thus, it would be an obligation to act and a prohibition to act [at the same time], according to [the text].

If it said: What about the proof of its impossibility based on revealed authority?

We shall say: It is proved by *ijmâ'* that every *qiyâs* which contradicts a clear text is void. Furthermore, Mu'âdh, رضي الله عنه, said, "When I cannot find a clear text, I will exert my own opinion." And the Messenger of Allâh, صلى الله عليه وسلم, approved of the statement. Also, there is the *ijmâ'* of the Companions to abandon *qiyâs* based on a solitary report. So what about a decisive *mutawâtir* text and the well-known fact of their statement, upon hearing a solitary report, "But for this report we would have decided by our opinion."

Moreover, the probity or indicativeness of the text is a decisive proof of whatever it is a text for. If the proof of the principle regarding a minor is conjecture, how then can the stronger be abandoned for the weaker? This is the basis for the Companions' *ijmâ'* in their rejecting *qiyâs* when it contradicts a text.

If it is said: When two decisive proofs are mutually contradictory and the later one is difficult, can the delay of the establishment of one of them on the basis of a solitary report [be permissible] so that it can be considered as the abrogating [text]?

We shall say: It is possible, for if it is the establishment of marriage, it requires the word of two [witnesses] and to establish adultery requires four. This shows that the caution necessary for the condition is not sufficient for that which is itself the condition. It is also possible to say that if the abrogation is established on the basis of a later event, while the abrogated [text] is something

decisive, then it is not sufficient for the abrogating [text] to be reported by a solitary report, for then this would be the proper occasion for *ijtihâd*. What is obvious should be accepted, since in this case one of the two texts is definitely abrogated. This is the objective of its acceptance of the specification.

VI. DISCUSSION: A rule cannot be abrogated by a Companion saying, "Such and such rule has been abrogated," if he has not stated, "I have heard the Messenger of Allâh, صلى الله عليه وسلم, say, 'I have abrogated such and such rule.' " If he says this, then the rule will be considered. If it [the rule] is established on the basis of a solitary report, then it is abrogated based on his statement. But if it is a decisive [rule], then it is not. As for his [the Companion's] statement, "such and such rule," it cannot be given decisive meaning because he may have considered what is not abrogation as abrogation.

Some consider an addition to a text as abrogation, which has been [reviewed] in other discussions.

Other people say that should the Companion relate to us what he holds to be abrogating, we would not follow him. However, we shall look into it. But if he categorically states this, then we accept it. He would not be categorical except on the basis of decisive knowledge.

But this [argument] is corrupt. Rather, the correct position is that if he mentions the abrogator, we shall consider it and decide upon it by our opinions. But if he does not actually mention [the abrogator], then we will not follow him. We may allow that he

could be saying this on the basis of his own *ijtihâd* alone. This is what al-Qâḏî [Abû Bakr al-Bâqillânî], رحمه الله, has mentioned. But in our view, the more correct position is to accept it as a statement of a Companion, when [for example] the Companion says, "[the Prophet] commanded 'this' and prohibited 'that,' " for this kind of statement is acceptable, as it will be discussed in the Book of Reports. There is no difference between the forms.

If it is said: 'A'isha, رضي الله عنها, said, "The Messenger of Allâh, صلى الله عليه وسلم, did not die without releasing [the forbiddeness] of those women who were unlawful to him by the saying of the Exalted, '*We have made your wives lawful to you.*' "[43] This [statement by 'A'isha] is then accepted.

We shall say: This is not satisfactory with us. Moreover, those who accept it, accept this as having an abrogating proof and is suitable for abrogation. But they do not follow her position.

CONCLUSION TO THE BOOK [OF ABROGATION]: REGARDING THAT WHICH INDICATES THE TIMING OF THE ABROGATING RULE

KNOW that when two texts are mutually contradictory the abrogating one is the latter and its delay cannot be known through the proof of reason or *qiyâs* from the *Sharî'a*, but solely on the authority of revealed authority. This can be done is several ways.

The first is when the expression itself indicates it, as in his

[43]Qur'ân, 33:50. 'A'isha's position here, which is not adhered to by Ghazâlî, lifts the restriction imposed on the Prophet in Qur'ân, 33:52.

saying, فادخروا, "I had previously prohibited you from storing the meat of sacrificial animals, now store them," and like in his saying, "I have forbidden you from visiting the graves, now visit them."

The **second** is the *ijmâ'* of the *ummah* regarding rules that are abrogated, with the abrogating [text] being the latter.

The **third** is when the transmitter mentions the date—for example, when he says, "I heard it during the Year of the Trench or the conquest of Mecca," while the abrogated has been known to be before it. There is no difference as to whether the abrogator or abrogated is transmitted by the same reporter or by two reporters.

There are [six] ways in which dating cannot be established.

The **first** is when a Companion states, "This was a rule laid upon us; then it was abrogated."

For it is possible that he may have said this on the basis of *ijtihâd*.

The **second** [way in which dating cannot be established] is for one of the [texts] to be established in the Qur'ân.

For the *sûras* and verses are not set in the chronology of their revelation. Rather, the later ones may have come first.

The **third** [way in which dating cannot be established] is for the transmitter to be one of the younger Companions.

For a minor may have transmitted from someone whose Companionship is more senior, and at times senior [Companions] transmitted from the younger.

The **fourth** [way in which dating cannot be established] is if the transmitter became a Muslim in the year of the conquest of Mecca and does not say, "I heard it in the year of conquest."

For he may have heard it as an unbeliever and transmitted it after becoming a Muslim; or perhaps he heard it from someone who preceded [him] in Islam.

The **fifth** [way in which dating cannot be established] is the possibility that the transmitter's Companionship was severed. Thus, it may be that his report is of an earlier date than the report of someone whose Companionship endured.

Although [the one of severed Companionship] may be suspect, , it is does not necessarily follow that the report of the one whose Companionship endured occurred after the time when the other's Companionship was severed.

The **sixth** [way in which dating cannot be established] is that one of the two reports should be in accordance with the judgment of reason and the original [state] of freedom, for it would seem to have come earlier.

But, it is not necessarily so, as found in his saying, صلى الله عليه وسلم, "Ablution is not required after eating that which contacts fire." This does not necessarily precede the obligatoriness of making ablution [after eating] that which has contacted fire, for it is possible that it used to be obligatory but was then abrogated.

Allâh knows best. We have now finished the first of the four principles, namely the Book. This is followed by an account of the *Sunna* of the Messenger of Allâh, صلى الله عليه وسلم .

THE UNIVERSITY OF CHICAGO

ABŪ ḤĀMID AL-GHAZĀLĪ'S JURISTIC DOCTRINE IN *AL-MUSTAṢFĀ MIN 'ILM AL-UṢŪL* WITH A TRANSLATION OF VOLUME ONE OF *AL-MUSTAṢFĀ MIN 'ILM AL-UṢŪL*

VOLUME THREE

A DISSERTATION SUBMITTED TO
THE FACULTY OF THE DIVISION OF THE HUMANITIES
IN CANDIDACY FOR THE DEGREE OF
DOCTOR OF PHILOSOPHY

DEPARTMENT OF NEAR EASTERN LANGUAGES
AND CIVILIZATIONS

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THE SECOND PRINCIPLE OF THE SHARI'A SOURCES

THE SUNNA OF THE MESSENGER OF ALLAH صلى الله عليه وسلم

The statements of the Messenger of Allâh, صلى الله عليه وسلم, are proofs, for his truth has been proven by miracles and by the command of Allâh, تعالى, to follow him. He did not speak on caprice. It was but revelation revealed to him.[1] But a part of the revelation is recited, and is therefore called the Book, and a part is not recited, and this is the *Sunna.*[2]

The statements of the Messenger of Allâh, صلى الله عليه وسلم, are proof for whosoever heard him verbally. As for us, his statement cannot reach except at the tongue of transmitters, either via *tawâtur* or *ahâd* reports. Thus, the discourse on this principle comprises an exordium, a division on *mutawâtir* reports and one on

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[1]Ghazâlî is referring to the Qur'ân, 53:4-5.

[2]For more discussion on the concept of *Sunna*, see Rahman's extensive chapter in *Islam*, pp. 43-71; 'Azamî, *Dirâsât fî al-Hadîth al-Nabawî*, pp. 1-20; Ignaz Goldziher, *Muslim Studies*, tr. M. Stern, 2: *passim*; Shawkânî, *Irshâd al-Fuhûl*, pp.33-69; Āmidî, *Ihkâm*, 1:247; al-Shâfi'î, *Risâla*, pp. 64-117 and 369-401; Shîrâzî, *al-Tabsira fî Usûl al-Fiqh*, pp. 289-348; and compare with Ghazâlî's earlier treatment of *Sunna* in *al-Mankhûl*, pp. 235-87.

ahâd reports. Each division is comprised of several chapters.

As for the Exordium, it is an explanation of the terms of the Companions, رضي الله عنهم, in transmitting reports from the Messenger of Allâh, صلى الله عليه وسلم. This has five ranks.

The **first**, which is the strongest of them, is when a Companion states, "I *heard* the Messenger of Allâh, صلى الله عليه وسلم, saying" such and such; "he has informed me"; "has told me"; or "has verbally told me." This [form] is impenetrable to doubt. Therefore, this is the basis of transmission and conveyance. For he said, صلى الله عليه وسلم, "May Allâh make prosperous he who hears my speech, retains it, and then delivers it as he has heard it. . . ."[3]

The **second** is when [a Companion] says that the Messenger of Allâh, صلى الله عليه وسلم, "said" such and such or "informed" or "told." This has the appearance of being a transmission when it issues from a Companion, but it is not a decisive textual [statement]. For one of us may say that the Messenger of Allâh, صلى الله عليه وسلم, "said . . . ," relying on what has been related to him, though not [actually] hearing it from him. /1:130/ Therefore, it is not impossible for a Companion to say this relying on a *tawâtur* report or the tongue of one he trusts. Evidence that doubt enters [this type] is in Abû Hurayra's report that the Messenger of Allâh, عليه السلام , has said, "Whosoever wakes up in the state of *janâba* [ritual impurity from sexual intercourse] should not fast." But when he [Abû Hurayra]

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[3]Wensinck, *Concordance et Indices de la Tradition Musulmane*, 6:472, makes reference to this *hadîth* as being reported by Abû Dawûd, Tirmidhî, b. Mâjah, Dârimî, and b. Hanbal.

was questioned further, he said, "It was related to me by al-Fadl b. 'Abbâs." In the first case, he related the report but did not explicitly [link it to the Prophet].

Similarly, his statement, صلى الله عليه وسلم , "Ribâ [usury] is only in a loan," was reported by b. 'Abbâs, رضي الله عنهما.[4] But when asked about it, he reported that he had heard it from Usâma b. Zayd. Although this [form] may be liable to doubt, it is, nevertheless, unlikely. Indeed, more unlikely [in this rank] is when a Companion says, "The Messenger of Allâh, صلى الله عليه وسلم, *said* . . ." He would not say this unless he had actually heard Allâh's Messenger, صلى الله عليه وسلم. This differs from someone who was not a contemporary [of the Prophet] and who then says, "The Messenger of Allâh, صلى الله عليه وسلم, *said* . . ."; for the evidence of his circumstance indicates that he did not hear it, and his claim of hearing it is not deluding, unlike the [case] of the Companion, because his statement, "The Messenger of Allâh, صلى الله عليه وسلم , said . . . ," suggests hearing. Thus he would not proceed except upon hearing. This is evident.

All reports have been transmitted [to us] this way. For it is [commonly] said, "Abû Bakr has said that the Messenger of Allâh, صلى الله عليه وسلم, said"; or " 'Umar has stated that the Messenger of Allâh, صلى الله عليه وسلم, said." Thus, we can only understand from this that [it was] heard.

The **third** [rank] is when a Companion says that the

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[4]In referring to 'Abd Allâh b. 'Abbâs, the phrase *radiya Allâhu 'anhu* becomes *'anhumâ* to include his father.

Messenger of Allâh, صلى الله عليه وسلم, "commanded" such and such, or "prohibited" such and such. This is liable to two interpretations.

One of them is that it was actually heard, just as it is said, "[The Prophet] said." The second, concerning a command, is that [the Companion] may have considered that which is not a command to be a command, for people have differed regarding the [Prophet's] saying "do," as to whether it is a command [or not].

Hence, some of the Ẕâhirites have said that there is no [*Sharî'a*] proof in this if the [actual] words are not stated. However, the truth is that it is inconceivable that a Companion would unconditionally [state] this unless he decisively knew [the Prophet] commanded it and unless he heard him say, "I command you to do this" or "do this," along with circumstantial evidence expressing that it is a command or giving the necessary understanding that he intended it to be a command.

As for the possibility that it may have been mistakenly taken as a command and is presumptuous, this we cannot necessarily attribute to a Companion. Rather, the apparent meanings of their statements and actions should be taken as they are. And because of this, if he said, "The Messenger of Allâh, صلى الله عليه وسلم, said" such and such, but laid a condition and specified a time, it then becomes incumbent upon us to follow him; and it is not permissible for us to say that perhaps [the Companion] misunderstood the condition and the timing, and considered what is not a condition to be one.

Hence, it is obligatory to accept the statement of a Companion that some rule has been abrogated. Otherwise, there is no distinction between a statement of abrogation or a statement of

command.

Thus, 'Alî, رَضِيَ الله عَنْهُ, unconditionally stated, "I have been commanded to fight those pact breakers, rebels, and transgressors." It is inconceivable that someone like him would say "I have been commanded" unless he had a compelling basis requiring it to be a command.

However, this is liable to a third interpretation, with reference to its generality or specificity, such that some have assumed that when [a statement] is made unconditionally, it is necessarily a command for the entire community. The truth is that despite those who say that it has a general meaning /1:131/, one must suspend [judgment] on this because it is possible that what he [the Companion] heard could have been a command for the *ummah*, for a group, or for a specific individual. All of this makes it permissible for him to say it is a command. Therefore, one should suspend [judgment] for the proof.

However, one proof for this is that [the Prophet's] command to one is a command to everyone unless it concerns a particular situation, like travelling or being resident. If this is so, the Companion would explicitly state it, like his statement, "We were given the order that when on a journey we were permitted to not take off our shoes for three days and nights." Of course, if he had said, "We were commanded" such and such—and it is known from the practice of the Companions that one would not unconditionally state this unless it was a command for the *ummah*—then it is to be taken as is. Otherwise, it could be a command for the *ummah*, for him, or for a group.

The **fourth** [rank] is when it is said, "We are commanded" such and such or "prohibited" from such and such. This is liable to the previous three interpretations plus a fourth one, which concerns the commander, for it cannot be known whether he is the Messenger of Allâh, صلى الله عليه وسلم, or one other than him, such as from among the *imâms* or scholars. Thus a group has said that this [report] does not embody proof because of its many interpretations. But most maintain that it cannot be interpreted except as being a command from Allâh, تعالى, or a command from His Messenger, صلى الله عليه وسلم, for he intends either to establish a *Shar'î a* [rule] or raise a proof. Thus, it should not be interpreted to be a statement by someone whose word has no authority.

Similar to this is [the Companion's] statement that "part of the *Sunna*" is such and such or that the "*Sunna* has continued to be" such and such. Thus, the obvious meaning is that he did not intend this to indicate other than the '*Sunna*' of Allâh's Messenger, صلى الله عليه وسلم,which must be followed; not the *sunna* of someone else to whom obedience is not mandatory. Furthermore, it makes no difference whether the Companion says this during the lifetime of the Messenger of Allâh, صلى الله عليه وسلم, or after his death.

As for the Successor, when he says, "We are commanded," this may be taken as the command of Allâh's Messenger, صلى الله عليه وسلم, or the command of [anyone in] the entire *ummah*. The proof for this is established by its [form]. It is also possible that it is a command of the Companions. But it does not behoove a scholar to state this unconditionally unless he intends it to come from one whose obedience is mandatory. Still, the liability of a

second interpretation is more likely in the statement of a Successor than in the words of a Companion.

The fifth [rank] is saying, "They used to do" such and such. If this refers to those of the time of the Messenger, عَلَيْهِ السَّلَام, then this is proof that the said action was permitted; for mentioning this in the context of [establishing] a proof indicates that his intended meaning was that the Messenger of Allâh, صلى الله عَلَيْهِ وَسَلَّم, knew of and kept silent about it, meaning that it was permissible—excluding what did not reach him.

An example of this is the statement of Ibn 'Umar, رَضِيَ الله عَنْهُ, "During the time of Allâh's Messenger, صلى الله عَلَيْهِ وَسَلَّم, we used to confer and say that the best of the people after the Messenger of Allâh, صلى الله عَلَيْهِ وَسَلَّم, were Abû Bakr, then 'Umar, then 'Uthmân. When this reached Allâh's Messenger, صلى الله عَلَيْهِ وَسَلَّم, he did not object to it."

He also said, "We used to practice sharecropping during the time of the Messenger of Allâh, صلى الله عَلَيْهِ وَسَلَّم, and for forty years after him until Râfi' b. Khadîj informed us of the *hadîth* [against sharecropping]."

Also, Abû Sa'îd said, "During the time of the Messenger of Allâh, صلى الله عَلَيْهِ وَسَلَّم, we used to give one *sa'a* [5] of wheat for *zakât al-fitr*."[6]

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[5]A measure of quantity equaling 3,261.5 grams according to the Hanifites. Others take it be 2,172 grams, Qal'ajî, *Mu'jam Lughat al-Fuqahâ'*, p. 270.

[6]Alms given in *Ramadân*.

Similarly, 'A'isha, رضي الله عنها, said, "They used to amputate [the hand of] a thief for [stealing] something insignificant."

As for the statement of a Successor that "They used to do" such and such, this does not indicate the entire *ummah*. Rather, it indicates [the actions] of some. Therefore, this does not constitute proof unless he explicitly reports that it is from the people of *Ijmâ'*. \1:132\ In that case, it would be merely reporting *ijmâ'*—and a discussion will follow concerning the validity of this when based on a solitary report.

So, from this Exordium it should have become clear which report can be taken as originating from the Messenger of Allâh, صلى الله عليه وسلم, and which is not to taken as reported from him. Now let us explain the avenues by which reports reach us, that is, through *tawâtur* or *ahâd* [channels].

DIVISION ONE OF THIS PRINCIPLE: A DISCOURSE ON *TAWĀTUR*
Consisting of [Three] Chapters

Chapter One: Tawâtur Establishes Certain Knowledge

Before this [discourse], however, we should define '*khabar.*' This is a statement which is liable to be true or false; or, it is a statement which either truth *or* falsehood may enter. This definition is better than when they say ". . . Truth *and* falsehood enter," for one report cannot be characterized by both. Indeed the speech of Allâh, تعالى, cannot by any means be characterized by falsehood. Nor can reports of impossible things be characterized by any means as truth.

A report is one of the types of speech which inheres in the mind. As for its expression, this consists of segmented sounds which have a form, like in saying, "Zayd[7] is standing or hitting [someone]." This is not a report per se; rather, it becomes a report by the issuer's intention to express by it what is in his mind. For this reason, what issues from a sleeping or insane person is not a report. As for the speech of the mind, it is a report per se by its very genus; for if it is found, it is immutable by the intention of the intender.

As for establishing that *tawâtur* indicates certainty, this is obvious and is contrary to what the *Sumaniyyah*[8] say, for they restrict knowledge to the senses and therefore deny this. Their restriction is false because we necessarily know that a thousand is greater than one, or the impossibility of one and the same thing being [both] eternal and originated, or other things that require other than sense perceptions, which we have mentioned in *Madârik al-Yaqîn.*[9]

Rather, we say that their restriction of knowledge to the senses is *known* to them, and this in itself is something that is not

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[7]In the text, Ghazâlî uses the name 'Zayd' generically.

[8]According to Tahânawî, *Kashshâf Istilâhât al-Funûn*, 1:702, 2:1390, they are idol worshippers who also believe in reincarnation and maintain that knowledge can only be apprehended only through the senses. See Ghazâlî, *al-Mankhûl*, p. 235. See also al-Juwaynî, *al-Burhân*, 1:124.

[9]Ghazâlî is most likely referring to his discussion in the introduction of *al-Mustasfâ*, p.11-12.

perceivable through the five senses. Furthermore, no sane person can doubt that there is a city in this world called Baghdad, even if he has never entered it; nor can he doubt the existence of prophets, nor the existence of al-Shâfi'î or Abû Hanîfa, may Allâh have mercy on them, nor the states and the great events.

If it is said: If these were necessarily known, then we would not differ with you.

We shall say: Anyone who differs with this, he only differs by his tongue, or through the malfunction of his reason, or through sheer obstinacy. This denial cannot issue from many people, for their denial is customarily impossible on the very basis of what they have known and their stubbornness. If we were to abandon what we necessarily know because of your view, then it should necessarily follow that you must abandon perceptibles because of the dispute of the Sophists.

As for the falsity of the opinion of al-Ka'bî, who holds that this kind of knowledge is discursive, we shall say that discursive knowledge is that in which it is possible for doubt to enter and for its conditions to change. So some people know it, but not others. /1:133/ Women and children do not know it; nor do those who are not discursive thinkers; and even those who deliberately abandon discursive thinking do not know it.

All discursive knowledge is such that a scholar [who has it] would find himself doubting it and then seeking [it]. But we do not find ourselves doubting the existence of Mecca, or the existence of al-Shâfi'î, رَحِمَهُ الله, then seeking after them. If you mean by being

discursive anything pertaining to this, then we deny it.

But if you mean by it that the mere statement of a reporter does not yield decisive knowledge so long as two premises are not set in the mind—the first of which is that these [reporters], despite the difference of their circumstances, the diversity of their objectives, and their large number cannot together conspire to lie under any circumstance and that they will not agree except on truth; and the second being that they do agree on the reports about the eventand that knowledge about the truth is based upon these two premises having come together—then to this we concede.

It is necessary for the mind to become conscious of these two premises so that it can acquire knowledge to assent with. Even if these premises are not formed in the mind systematically by words, [the mind] is conscious of them. Thus, the affirmation is obtained while one is not conscious of being conscious of it. The truth of the matter about this is that it becomes necessary knowledge if it is an expression of what accrues to [the mind] without any intermediary, like our statement that the eternal cannot be that which is originated, and the originated cannot be that which is nonexistent. Therefore, this is not necessary, for it resulted through the intermediacy of the two mentioned premises. But if it is an expression of what accrued to without the formation of an intermediary in the mind, then it is necessary.

There may be an intermediary present in the mind, though the person is not conscious of the way it intermediates and how knowledge accrues through it. Hence, it is called *primary*; but it actually is not so, as in our statement "Two is half of four." For this

is not known except through an intermediary, i.e. a half of the whole's parts equals the other half, where 'two' is one of the two parts, which is equal to the second part of the total, which is four; therefore, it is half. Thus, this kind of knowledge has accrued through an intermediary that is clear and [actively] present in the mind. This is why when it is said, "Is thirty-six half of seventy-two?" one needs to think about it until one knows this totality is divisible into two equal parts, each of them being thirty-six. Therefore, knowledge about the truth of a *tawâtur* report accrues through these premises—and that which is similar cannot be primary.

As for whether this is to be called necessary knowledge [or not], the technical use of the terminology may vary. That which is necessary, according to most [logicians], expresses that which is primary, not that which we find ourselves compelled to, for all mathematical sciences yield necessary knowledge and are discursive.

The meaning of being discursive is that they are not primary. Knowledge of the truth of a *tawâtur* report is similar to this. Approaching this is knowledge acquired through experience, namely what is expressed or described by a systematic reoccurrence of events, as in our statement, "Water satiates thirst," or, "Alcohol intoxicates," as we have already indicated in the introduction of this book.

If it is said: If someone argues that this kind of knowledge is not necessary because if it were necessary, then we would

certainly know that it is necessary, and thus disputing /1:134/ it would be inconceivable, is this argument correct or not?

We shall say: If what is necessary expresses that which we find ourselves compelled to, then necessarily we know in our minds that we are compelled to it. But if it is an expression of what accrues without an intermediary, then it is possible that in order to know this one may need to contemplate; yet doubt may occur here, just as it is imagined that we assume believing in something decisively but also hesitate as to whether our belief is certain or not.

Chapter Two: The Conditions of Tawâtur, which are Four

The **first** [condition] is that they [the reporters] must report on the basis of [certain] knowledge and not on assumption. Therefore, if the people of Baghdad were to report to us about a bird they assumed to be a pigeon or about a person they assumed to be Zayd, then certain knowledge would not accrue to us that it *is* a pigeon or that he *is* Zayd. Nor does this need to be reasoned out. Rather, the state of the informed is no more than the state of the informer, for it is in the power of Allâh, تعالى, to create in us [certain] knowledge through their report, even though it is conjectural. But ordinarily such [practice] does not systematically occur.

The **second** condition is that their knowledge must be necessary [and] based on perceptibles; for if the people of Baghdad were to inform us about the world's temporal origin and about the truthfulness of some of the prophets, then [certain] knowledge will

not accrue to us. This also is ordinarily known. Otherwise, it is possible for the power of Allâh, تَعَالَى, to have made this report yield the source of [certain] knowledge in us.

The **third** condition is that the ends and intermediary [links of *mutawâtir* reports] must equally secure the previous conditions,[10] as well as the complete number [of reporters]. So, if the succeeding generations continued as time went on to report from the preceding ones, with the conditions not being fulfilled through out the time, then [certain] knowledge concerning their truthfulness would not have accrued because reports of the people of each generation are independent per se; therefore, each one must satisfy these conditions.

For this reason, [certain] knowledge did not accrue to us regarding the truthfulness of the Jews—in spite of their large number—when reporting of Moses, blessings of Allâh upon him, that he rejected any abrogation of his *Sharî'a*; nor regarding the truthfulness of the Shî'ites, the 'Abbâsids, or the Bakriyya[11] when they reported a text concerning the imamate of 'Alî, or al-'Abbâs, or Abû Bakr, رَضِيَ الله عنهما, [respectively], even though the number of transmitters has increased greatly in recent times. For some of these [reports] were first forged by individual reporters, circulated, and then, from that time onward, the [number of] reporters multiplied, while the conditions were satisfied only a few times.

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[10]This refers to the first and second conditions.

[11]This refers to those claiming that Abû Bakr's caliphate was appointed by revelation.

So, not all eras commonly share this; therefore, assent does not accrue. The contray holds true with reference to the existence of Jesus, عليه السلام, and the challenge to his prophethood, or the existence of Abû Bakr and 'Alî, رضي الله عنهما, and their rise to the imamate. Since these have the ends and the intermediary [as *mutawâtir*], then [certain] knowledge necessarily accrues to us such that we are unable to doubt ourselves about it. But we are able to doubt what they reported from Moses and Jesus, عليهم السلام, or about the determination of the imamate, based on the texts [i.e. Qur'ân or *Sunna*].

The **fourth** condition concerns number. So let us refine [the understanding of] its aim by addressing it in the [following] discussions:

I. DISCUSSION: The number of reporters is divisible into what is deficient, which does not generate [certain] knowledge, what is complete, which generates [certain] knowledge, and what is superabundant, /1:135/ which a portion of imparts [certain] knowledge, while the rest consists of more than what is sufficient.

The complete number, namely the minimum that generates [certain] knowledge, is unknown to us. But when necessary knowledge accrues to us, we can discern that the completeness of the number *is*. But it is not the case that through the completeness of the number we may prove that certain knowledge accrues. Once you know this, concerning the complete number through which assent to an event is established, is it then conceivable for [the complete number] not to indicate certain knowledge in some

events?

Al-Qâdî [al-Bâqillânî], رحمه الله, said that this is impossible. Rather, all that is sufficient to produce [certain] knowledge in one event is sufficient for every event. Moreover, when certain knowledge accrues to one person, it then must accrue to every person who shared in hearing it. It is inconceivable to be any other way.

This would be correct if reports were isolated from other circumstances. But [certain] knowledge is not merely a function of number. The relationship of the multitude of numbers to all events and individuals is the same. Yet when other circumstances are conjoined to them, this leads to assent. In this, therefore, it is permissible for events and people to differ. But al-Qâdî denied this and did not consider circumstantial evidences and did not attribute any effect to them. This is not satisfactory because it is possible for reporting alone to produce [certain] knowledge when there are numerous reporters, even if there is no circumstantial evidence. On the other hand, mere circumstantial evidence also can generate [certain] knowledge, even if there are no reports. Therefore, it is not impermissible for circumstantial evidence to be conjoined with reports, in order that some circumstantial evidences can supplement the [lacking] number of reporters.

This will not be clear until one knows the meaning of circumstantial evidence and how it is probative. So, we say that there is no doubt that we know certain things which are not perceptible. For we recognize one's love, hate, or fear of a person, or one's anger and shame. Yet these are states in the mind of the

one who loves or the one who hates which sense perception is unconcerned with. Sometimes they are indicated by evidences within individual units which are not [independently] regarded as decisive. In fact, they are liable to doubt. But with them the mind is inclined to form a weak opinion, while the second and the third [bits of evidence] confirm it. But when each exists in isolation, then doubt may enter them. However, certain [knowledge] accrues with their conjunction, just as the statement of each member of the *tawâtur* reporters is liable to doubt if each is taken individually, while decisiveness accrues as a result of their conjunction.

For example, we can recognize the love of an admirer not by one's statements but through actions which belong to those who love—serving one's beloved, spending on one's beloved, attending one's sittings, visiting one, accompanying one in one's whereabouts, and things of this kind. For each act has an evidence which, if isolated, may individually point to a motive concealed in the mind other than loving. But the multiplicity of evidences reaches a point where [certain] knowledge of one's love accrues to us. And so it is with one's hatred when actions resulting from it are seen to come from the person. Likewise, we recognize one's anger and shame not simply because of the redness of the person's face, for redness is but one of the evidences.

Similarly, we see an infant who continues suckling milk, thus certain knowledge accrues to us with regard to knowing that milk is reaching his stomach, /1:136/ even though we do not see the milk in the breast because it is concealed. Nor do we see it emerging because it is covered by the mouth. But the suckling motion of the

infant and the motion of his throat provides evidence, although this [movement] may occur without milk reaching him. In addition to this, the breast of a young woman is not usually without milk, nor is her nipple normally without an opening. Moreover, the infant's instinct drives him to suckle to extract milk. Although anomalies of each of these may occur, they are not frequent. But if the ceasing of the infant's crying is added to this, while he did not take in any other food, then this too becomes circumstantial evidence, though it is possible that his crying was due to pain and his ceasing was due to its removal. While it is also possible that he ate something else that we did not witness even though most of the time we were with him, in spite of this, the conjunction of all these evidences is like the conjunction of reports and their *tawâtur*. For every evident proof is liable to doubt, just as is the statement of each individual reporter, though their conjunction yields [certain] knowledge.

It is as if this faculty is the sixth of the faculties of knowledge in addition to what we have mentioned in the introduction, i.e. the primaries, perceptibles, intrinsic visions, experiences, and *tawâtur* reports. So, this may be appended to it. Since this is undeniable, it is not impossible for assent to accrue based on the statements of an incomplete number [of reporters] when circumstantial evidences are conjoined to them. For if they were individually isolated from circumstantial evidences they would not indicate certain knowledge.

Indeed, if five or six people report the death of a person, their truthfulness may not be affirmed as certain knowledge. But

if this is conjoined by the emergence of the deceased's father from his home, bareheaded and barefoot, in torn clothes and disturbed, slapping his face and head—though he is a senior man of high status and nobility who does not customarily deviate from his conduct and honor unless it is out of compulsion—then it is permissible that this become circumstantial evidence added to the statements of those people. So, in effect, it accomplishes the same thing as does [completing] a lacking number [of reporters].

The permissibility of this can be established with certainty; and experience indicates this as well, for numerous reporters may report an affair which concerns the acquisition of power and its policy of proclamation. But those reporting it are from the king's chief officers; so it is conceivable that they have assembled to conspire to lie for control of power. If they were separated and expelled from power, they would not be conceivably liable to such [accusation]. This indeed affects the mind in a fashion undeniable. Thus, I do not know why al-Qâḏî denied this and what his proof is for its impossibility.

It should, therefore, have become clear from this that it is permissible for the number of reporters to differ depending on the events and persons. There may be an individual in whose personality [various] characteristics have been enrooted, which render him readily inclined to accept certain things. Therefore, this acceptance may assume the position of circumstantial evidence, which in turn assumes the status of some reporters. Thus, arising from this is the lack of proof for its impossibility.

If it is said: Is it permissible for certain knowledge to accrue from the statement of an individual?

We shall say: It has been related from al-Ka'bî[12] that this is permissible. However, if the circumstantial evidences are lacking, its permissibility is inconceivable, even for a fool. But on the other hand, when circumstantial evidences are conjoined it is not improbable that a point be reached where /1:137/ only one bit of circumstantial evidence remains to establish certain knowledge. Then the statement of one reporter can assume the place of that piece of circumstantial evidence. This is another case where impossibility cannot be established. Nor can its occurrence be decisively proven because its occurrence is only ascertained through experience which we have not tested.

Yet we have often tested what we have come to believe in with certainty on the basis of an individual reporter's statement. But when conjoined with the circumstances of his conditions, they were then exposed as being deceptive. Due to this, al-Qâḏî held [the accrual of certain knowledge from the statement of an individual] to be impossible.

Now, this discourse is in reference to events together with the ordinary continuing in its expected way. If we assume this custom to be broken, then Allâh, تعالى, is able to impart in us certain knowledge on the basis of an individual's statement,[13] without

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[12]al-Ka'bî (319/931) was a Mu'tazilite of the Baghdad school. For more on his moves, see Jâr Allâh, *al-Mu'tazila*, p. 155.

[13]The construction in the text is ambiguous. It may also be taken to mean "one statement."

circumstantial evidence.

II. DISCUSSION: Al-Qâḏî, رحمه الله, decisively concluded that four falls short of the complete number [for *tawâtur*], though it [the number four] is founded upon the *Sharî'a* and permissible for a judge to restrict it to credible witnesses on the basis of *ijmâ'*, such that the preponderance of an opinion accrues. But for that which is necessarily known, speculation is not required. What he [al- Qâḏî] mentions is correct, provided there is no circumstantial evidence; for we do not find ourselves compelled to accept the report of four. If along with this, on the other hand, circumstantial evidences are assumed, obtaining affirmation is not impossible. But this does not occur on the basis of reporting alone, but rather on the basis of circumstantial evidence along with reporting. But, al-Qâḏî, رحمه الله, regards this as impossible even with the addition of circumstantial evidences.

III. DISCUSSION: Al-Qâḏî said, "I know by *ijmâ'* that four is incomplete. As for five, I suspend my judgment with regard to it because *ijmâ'* has not established proof for it." But this is weak because we know this on the basis of experience, for there are many reports where we hear from five or six and certain knowledge does not accrue in us. They are, thus, incomplete; here we have no doubt.

IV. DISCUSSION: If we assume the absence of circumstantial evidence, then the least number of reporters by which necessary knowledge accrues is known to Allâh, تعالى , and unknown to us. We have no way of knowing it because we do not know at which point [certain] knowledge accrues—as in the existence of Mecca, al-Shâfi'ī, and the prophets, عليهم السلام— or the moment at which the *tawâtur* of the reports is established in us, whether it be after, say, the hundredth of two-hundred reports. It is very difficult for us to establish this kind of experience even if we were to contrive this.

One way of contriving this is to observe ourselves when a man, for example, is killed in a marketplace and a group leaves the scene of the killing and comes to inform us of his killing. Now, the statement of the first person arouses our speculation while the statement of the second and the third strengthens it. Thus, it will continue to be strengthened until it becomes necessary such that we cannot doubt ourselves about it. If it were conceivable to know the moment in which certain knowledge accrues necessarily, together with an account of the numbers of reporters, then it would be possible to know [the number]. But it is very difficult to know this moment, for the strength of belief increases in hidden gradations, like the increase of reason in a child capable of discernment until he reaches the point of *taklîf*, and like the increase of the morning light until it reaches the limit of its completion. For this reason, it remains shrouded in controversy, and its knowledge is very difficult for human power to attain.

However, there is an opinion held by some that specifies

/1:138/ [the number of reporters at] forty, taken from Friday prayer;[14] some specify seventy, taken by the statement of the Exalted, "*Moses chose among his people seventy men for Our appointment*,"[15] and some specify the number according to the number of the participants at the Battle of Badr.

All these are corrupt and lifeless dogmas which neither suit the purpose nor prove it. The conflict between these positions is enough to prove their corruption. Therefore, we have no way of determining the number. But through necessary knowledge we can rationalize that the number for [*tawâtur*]—which is complete in the sight of Allâh, تعالى—[is the number of reporters] who have agreed to report.

If it is said: How can you know the accrual of certain knowledge on the basis of *tawâtur* when you do not know its minimal number?

We shall say: It is as we know that bread satiates hunger, water quenches thirst, and alcohol intoxicates, even though we do not know their minimal amount. We know that circumstantial

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[14]The analogy implied here is the requirement of forty repoters as the minimum number for *tawâtur* based on another position held by the Shâfi'ites and the Hanbalites, namely that the minimum number of attendees required for the validation of Friday prayer is forty. For an elaborate discussion and references to the major *fiqhî* positions, see al-Zahîlî, *al-Fiqh al-Islâmî wa Adillatuhu*, 2:272-314.

[15] Qur'ân, 7:155.

evidences yield certain knowledge even though we are not able to determine their genera and determine their minimal degrees.

V. DISCUSSION: If the complete number [for *tawâtur*] has reported and certain knowledge does not accrue about their truthfulness, then necessarily the [report] is decisively a lie, since for the accrual of certain knowledge there are only two conditions: One of them being completeness of number, and the second being that they should report on the basis of certainty and their own eyewitness [accounts].

If the number is complete, then the impossibility of certain knowledge can come only due to insufficiency of the second condition. So we know that they have lied, or some of them have lied in saying, "I have witnessed this." Rather, they have based this on imagination and conjecture, or deliberate lie, for if they tell the truth and their number is complete, then knowledge would necessarily accrue. This incidentally is another proof that four does not constitute the number for *tawâtur*, since certain knowledge of their truthfulness did not accrue to a judge. But it is permissible for him to judge by the preponderance of [credible] opinion based on *ijmâ'*.

If their number were to be complete, then a lack of certain knowledge with reference to their truthfulness is decisive proof that they all lied or that one of them lied. Therefore, we would hold conclusively that there is certainly among them a liar or a conjecturer— and testimony is not accepted from four who are known to have a liar or conjecturer among them.

If it is said: If certain knowledge does not accrue on the basis of their statement, and if they are of such large number that it is by the nature of the case impossible to claim that they unanimously agreed on lying, and if in addition to it being impossible that they would all have come under one command, or that they would mutually support each other in lying so that the truth would remain hidden to all of them and not one of them speaks about it, then on what basis can they be held to be lying, and how can it be conceived?

We shall say: This is possible only if they were to be divided into those who are truthful and those who are liars. As for the truthful, their number falls short of the range which independently yields certain knowledge. As for the liars, it is possible that they could have conspired because their number falls short of the range in which it becomes impossible for them to conspire and conceal it. But if they are of such number that it is not impossible for them to conspire and conceal it, then concealment of the truth is not impossible in this case until it is disclosed in the next case.

The Shī'ites' report concerning the divine appointment of the imamate, although their number is large, does not yield certain knowledge because they do not report on an eyewitness basis or on any authority. Yet if they have heard this from an earlier generation, then they are telling the 'truth.' But the number of the earlier generation that forged this lie is short of reaching the range where conspiracy and concealment is impossible for them. /1:139/ Furthermore, the succeeding generation may have assumed that

their [the previous generation's] number was complete, such that it would be impossible to conspire. Therefore, they are mistaken in their assumption, and yet hold their judgment to be decisive; and this is the source of their error.

Conclusion of this Chapter. Concerning the explanation of corrupt conditions [for *tawâtur*] which some people have held; there are five.

First, some people have made it conditional that the number reporting *tawâtur* should be such that they are countless and cannot be confined to a town. This is corrupt, for if all the pilgrims report an event which blocked them from completing their pilgrimage and prevented them from reaching 'Arafât, then certain knowledge accrues from their statement, even though they are limited in number. Also, if the people of a Mosque report a calamity preventing them from *Jum'a* prayer, their truthfulness would be known with certainty in spite of the fact that a Mosque can contain them, let alone a town. Similarly, when the people of Medina report something from the Messenger of Allâh, صلى الله عليه وسلم, certain knowledge accrues, even though one town holds them.

Second, some people have made it conditional that the kinship of the reporters must differ, that is, they may not be children of one father; and their homelands must differ so that they are not from a single quarter; and they must differ in religion so that they are not from one denomination. This also is corrupt because their being from one quarter and one ancestry have no effect except in the possibility of them conspiring. But the

enormity of the complete number averts this possibility. Yet if it is not such a large number, then conspiracy is possible among relatives, as it is possible among brothers or the inhabitants of one town, and as it is possible among the inhabitants of a quarter. Still, how can difference in religion be considered while we know the truthfulness of Muslims when they report a killing, riot, or battle. In fact, we know the truthfulness of the people of Constantinople when they report the death of a Caesar.

If it is said: We should then recognize the truthfulness of Christians in reporting the trinity from Jesus, عليه السلام, and their truthfulness about his crucifixion.

We shall say: They did not report the trinity as if through *tawqîf*[16] or hearing it from Jesus in a decisive, explicit text that does not tolerate different interpretations. Rather, they have imagined this on the basis of elusive words and have failed to grasp their significance, just as the anthropomorphists have made conclusions based on various verses and traditions while not understanding their meanings.

The *tawâtur* [report] must emanate from that which is perceptible. As for the killing of Jesus, عليه السلام, they were right in that they saw a person resembling Jesus, عليه السلام, being killed. But, they were confused with regard to him.

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[16]The term here refers to that which has been designated by God. See Qal'ajî, *Mu'jam Lughat al-Fuqahâ'*, p. 151; and Tahânawî, *Kashshâf Istilâhât al-Funûn*, 2:1497.

If it is said: Is confusion possible in the case of perceptibles? And if it is possible, then each of us may have doubt when seeing his wife or child and may think that perhaps he is confused.

We shall say: If it is a time of intervention into the ordinary [i.e., miracles], then it is possible that a mistake may occur in perception. But this occurs in the time of prophethood to establish the truth of the Prophet, عليه السلام; but it does not necessarily produce doubt at other than that time, for there is no dispute that the power of Allâh, تعالى, can turn a staff into a serpent. Again, this intervention into the ordinary is to support the truth of the Prophet, عليه السلام. But in spite of this, if we were to grasp a staff in our time, we would not fear it turning into a serpent, for we trust the ordinariness of our time.

If it is said: Intervention into the ordinary in our time \1:140\ is also possible to establish the *karâma*[17] of the *walîs*, for perhaps one of the *walîs* supplicated to Allâh, تعالى, for this [*karâma*] and He answered him. We should then doubt [sense perception] because of its possibility.

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[17]*Karâma* means miraculous gifts and graces from Allah who protects and aids His *walî(s)*, that is, a supporter, beloved, friend, ally, etc. of Allâh, one who is chosen for his preeminent holiness and extraordinary piety and virtue. For the linguistic and technical meaning of '*walî*,' see Manzûr, *Lisân al-'Arab*, 15:406-15; Mustafâ, et al, *Mu'jam al-Wasît*, 2:1070; and *The Shorter Encyclopedia of Islam*, 1953 ed., s.v. "Walî." For '*karâma*,' see *The Shorter Encyclopedia of Islam*, 1953 ed., s.v. "Karâma."

We shall say: When Allâh, تعالى, causes this, he removes the necessary knowledge which accrues from the ordinary from within us. But since we find in ourselves necessary knowledge that a staff does not turn into a serpent, nor a mountain into gold, nor pebbles in the mountain into jewels and sapphires, then we decisively hold that Allâh, تعالى, did not intervene in the ordinary even though He is able to do so.

Third, some people have made it conditional that they [reporters] should be *walîs* and believers.[18] This is corrupt because knowledge can accrue based on the statements of *fâsiqs*, the Murji'ites,[19] or the Qadarites.[20] Moreover, certain knowledge may accrue based on the statements of the Romans when reporting the death of their king.

Fourth, some people have made it conditional that reporters must not be forced by the sword to report. This is corrupt because if they have been forced to tell a lie, then certain knowledge would not accrue because of the absence of the required condition of reporting based on necessary knowledge. And if they tell the truth, knowledge accrues. For example, if the Caliph forces the

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[18]This is similar to the Shî'ite positions. See al-Muẕaffar, *Uṣûl al-Fiqh*, 2:57-81.

[19]For an Ash'arite definition, see Abû al-Ḫusayn 'Alî b. Ismâ'îl al-Ash'arî, *Maqâlât al-Islâmiyîn wa Ikhtilâf al-Muṣallîn*, ed. Helmut Ritter, (Wiesbaden: Franz Steiner Verlag GMBH, 1980), pp. 132-154.

[20]'Qadarites' is a name given to the Mu'tazilites by their opponents. See al-Ash'arî, *Maqâlât al-Islâmiyîn wa Ikhtilâf al-Muṣallîn*, pp. 155-278.

inhabitants of Baghdad by sword to report on something they have actually seen or to testify on something that they have concealed, and then they give the report, certain knowledge can accrue based on their statement.

If it is said: Is it possible to conceive of a number [of reporters] by which certain knowledge accrues on the basis of their statement if they report voluntarily and does not accrue if they report under force?

We shall say, al-Qâḏî, رحمه الله, held this to be impossible because he did not allow circumstantial evidence to enter [as a factor]. But, as far as we are concerned, this is not impossible, for we have already clarified that the mind can realize that those [reporters], in spite of their great number, have no purpose uniting them to lie. Then, it [the mind] accepts [what they say]. But if it appears that the sword is a unifying factor, then it is not unlikely that certain knowledge cannot accrue.

Fifth, the Rafiḏites[21] made it conditional that the infallible *imâm* should be among the reporters, and this necessitates certain knowledge of the reports of the Messenger, صلى الله عليه وسلم, for he [the *imâm*] is infallible. So what need is there for other than him to report?

It is necessary, then, that no certain knowledge accrues based on their *tawâtur* which reports the explicit statement of the

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[21]In Arabic, it is *al-Rafiḏa* (pl. *Rawâfiḏ*), one of the names given to the Shî'a. See *The Shorter Encyclopedia of Islam*, p. 466.

appointment 'Alî, رضي الله عنه, for among them none was infallible. Furthermore, the *imâm's* proof would not be binding except on those who witnessed and heard him from among the people of his town to the exclusion of other territories. The proof would not remain binding by the statement of his commanders, propagandists, agents, and his judges because none of them is infallible. Moreover, the report of the death of the governor or his killing could not be certainly known, nor the occurrence of civil unrest, nor fighting in another country. All of this necessarily follows their hallucinations.

Chapter Three
The Classifications of Reports: What Must Be Assented to, What Must Be Denied, and What Must Have its Judgement Suspended

The First Classification: What must be assented to

This has seven [categories].

First, there is that which has been reported through a number sufficient for *tawâtur*. Thus, one is obligated to assent to such a report necessarily, even though there is no other corroborative proof for it. For there are no reports whose truth can be known purely through reporting, except the *mutawâtir*. As for other reports, their truths are known only through a proof independent of the report itself /1:141/.

Second, what Allâh تعالى, has reported [must be assented to]; It is truth because lying is impossible for Him. This is supported

by two proofs. The stronger of them is the report of the Messenger, عليه السلام, concerning the impossibility of lying for Him, تعالى. The other is that His speech, تعالى, is self-subsisting, and lying is impossible with self-subsisting speech and for whom ignorance is impossible. For in this case, reporting is self-subsistant in the mind, in accordance with knowledge, and ignorance is impossible on the part of Allâh, تعالى.

Third, there are the reports of the Messenger, عليه السلام. The evidence for his truthfulness is the proof of his miracles, which indicate his truthfulness, together with the impossibility of miracles being manifested at the hands of imposters. For if that were possible, then the Creator would be unable to confirm the messengership of His messengers, and inability is impossible for Him.

Fourth what the *ummah* has reported [must be assented to]; for its infallibility is established based on the statement of the Messenger, عليه السلام, who is immune from lying (as are all those whom Allâh, تعالى, and His Messenger, صلى الله عليه وسلم, say are truthful and do not lie).

Fifth comprises every report which is in agreement with the reports of Allâh, تعالى, His Messenger, صلى الله عليه وسلم, the *ummah*—or whosoever they have affirmed as being truthful—or one whose truthfulness is evident by reason and revealed authority. For if such a report were to be a lie, then that with which it is in agreement would [also] be a lie.

Sixth is every authenticated report whose narrator has been established as having stated it in the presence of the Messenger of

Allâh, صلى الله عليه وسلم, that is, within the range of his hearing when he was not unaware of him, and he [the Prophet] remained silent toward him. For if such a person were lying, the Prophet would not have remained silent toward him, nor would he not have charged him with lying. By this we mean [affairs] related to religion.

Seventh is every report that has been mentioned in the presence of a group who kept from calling it a lie, where in a similar case it would ordinarily require denouncing it as a lie. In addition, it would be impossible to keep silent if the report were a lie. This is because this report would have an impact on their minds, and ordinarily it would be impossible for such a number to conspire in a manner that [their] conspiracy is concealed and that they would not speak about it.

It is through this channel that most of the events of the Messenger of Allâh, صلى الله عليه وسلم, have been established, for they occurred in front of crowds who kept silent from dening their [subsequent reports], even though it is impossible for people like them [the Companions] to keep silent about a lie. So when the condition is fulfilled and the denial is abandoned, as it has been mentioned, then it will have the same status as saying, "You have spoken the truth."

If it is said: When a person claims something in front of a crowd and claims their awareness of it, and they keep silent from denying the claim, will his truthfulness be established?

We shall say: If his claim is such that it is subject to examination and *ijtihâd*, then his truthfulness cannot be

established because of the possibility that they believed what he claimed on the basis of speculation. But if he was referring to something that has been witnessed, and their number is such that it would become impossible for them to come under one motivation, then silence [as opposed] to denying him is confirmation on their part.

If it is said: Will the truth be indicated through the *tawâtur* of a report of such a group, on whose part it is impossible for them to deliberately conspire to lie or concur to agree?

We shall say: Al-Qâḏî, رحمه الله, held this to be impossible and said that their statement necessarily yields certain knowledge [only] if in Allâh's knowledge they reach the number of *tawâtur*. But if it did not yield necessary knowledge, this indicates the incompleteness /1:142/ of the number. Nor is it permissible to conclude truthfulness by examining their conditions. Rather, we would know decisively that they are lying, or that among them there is a liar or a conjecturer.

This necessarily follows his [al-Qâḏî's] position since he does not consider circumstantial evidence [as valid]. But for whoever accepts circumstantial evidence, it is not unlikely that he may know their truth through a sort of ratiocination.

If it is said: Is it necessary that a solitary report upon which the *ummah* acted be regarded as true?

We shall say: If they have acted in harmony with it, they may have acted in accordance with a different source. Moreover, if

they did act in accordance with this, they have been ordered to act upon solitary reports, even if they do not know its truth. Consequently, it is not necessary to judge that it is truth.

If it is said: If the reporter were to be a liar, then the *ummah* would be acting upon falsehood. This would be an error, which is not permissible for the *ummah*.

We shall say: The *ummah* is only charged to worship by acting in accordance with reports in which their truthfulness preponderates—and it did so in their minds, as when a judge rules on the basis of testimony from trustworthy [reporters]. He is not in error even if the witness is a liar. Rather, he is correct for he was not ordered but to do this.

The Second Classification of Reports: Those which are Known to be False

They are four.

First is that whose contrary is established by the necessity of reason, ratiocination, sense perception and experience, *mutawâtir* reports, and, in general, all that contradicts what is known through the mentioned six avenues—like one who reports contraries together, or the immediate resurrection of the dead,[22] or that we are sitting on an eagle's wing, or are in the whirl of an ocean, as well as all that whose contradictions are perceived.

Second is anything which contradicts decisive textual

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[22]That is, distinguished from Resurrection Day.

evidence from the Book, *mutawâtir Sunna*, and the *ijmâ'* of the *ummah*, for they come in denial of Allâh, تعالى, His Messenger, صلى الله عليه وسلم, and the *ummah*.

Third is that which has been openly denied by a large number, such that it is impossible by the nature of the case that they conspire to lie when they state, "We were present with the reporter at the given time, and we did not at all find what he reported."

Fourth are those [reports] which a large number has kept from reporting and speaking about, in spite of the fact that the event [was reported to have] occurred in their presence and that it would be customarily impossible for them to keep from mentioning it when there is abundant impetus to report it. For example, if one should report that an *amîr* of a town has been killed in the market place in the presence of a large number of people and none of them spoke about it, then his lie is decisively concluded. For were he truthful, there would be abundant impetus to report this. Ordinarily, it would be impossible that this person exclusively report it.

It is in this way that we know the falsity of anyone who claims opposition to the Qur'ân, or [the existence] of a statement from the Messenger specifying another prophet to come after him, or that he left a number of male children, or that he stated the identity of a particular *imâm* in the presence of a large number of people; or that he made obligatory fasting in the month of *Shawwâl* or the prayer of the late morning, and such things which are by the nature of the case impossible to conceal.

If it is said: Solitary reporters have transmitted news for which there is abundant impetus to report, to the degree that difference of opinion has occurred about such things as his *ifrâd* , or *qirân* of *hajj*, صلى الله عليه وسلم ;[23] or that he entered the Ka'ba and prayed in it;[24] or that he married Maymûna while he was in the state of *ihrâm*; عليه السلام;[25] or that he entered Mecca by force; or that he accepted the testimony of an individual bedouin concerning the sighting of the crescent, though the bedouin's isolated sighting was such that no one else shared it with him /1:143/;[26] or about the report of the splitting of the moon which no one reported except b.

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[23]The technical usage of '*ifrâd* 'describes the state of *ihrâm* when one intends to perform only *Hajj*; if the intention is to combine '*umrah* with *Hajj*, it is called *qirân*. A third term closely associated with these in legal works is *tamattu'*, describing the performance of '*umra* then *Hajj*, each with an independent *ihrâm* in the same year during *Hajj*. For an elaborate discussion, see al-Zahîlî,*al-Fiqh al-Islâmî wa Adillatuhu*, 3:133-44, where he also refers to other sources; and al-Kasânî, *Badâ'i' al-Sanâ'i'*, 2:167.

[24]The Prophet's prayer inside the Ka'ba is a subject of dispute among the *fuqahâ'*. See details in al-Kasânî's *Badâ'i' al-Sanâ'i'* , 1:115; Ibn al-Humâm, *Fath al-Qadîr;* 1:479; Ibn Athîr, *al-Lubâb*, 1:138; al-Zahîlî, *al-Fiqh al-Islami wa Adillatuhu*, 1:602-4; and Ibn al-Qayyim, *Zâd al-Ma'âd*, 3:429-64, which has an extended discussion on the Prophet's prayer and entering Mecca by force.

[25]Reports on Maymuna's marriage are cited by many. See al-Tirmidhî, *Sunan*, , ed. M. Shâkar, (: Halabî,) 3:580-83; Ibn al-Hajjâj, *Sahîh Muslim*, 2:1030.

[26]For a full discussion on the problem of sighting the crescent, see Zahîlî, *al-Fiqh al-Islâmî wa Adillatuhu*, 2:598.

Mas'ûd, رضي الله عنه, and a small number with him, while it should have been seen by every believer, disbeliever, bedouin, and city dweller;[27] or the Christians' reports of the miracles of Jesus, عليه السلام, although they do not report his speech in the cradle, while it was one of his greatest miracles; or the transmission of the Qur'ân by the *ummah*, though they did not report other miracles of the Messenger, عليه السلام, as broadly as they did the Qur'ân; or people transmitting the major events of the messengers while they did not report the ones of Shu'ayb, عليه السلام; or the *ummah* reporting the *sûras* of the Qur'ân while the *mu'awwidhatân* were not reported like the others so that b. Mas'ûd, رضي الله عنه, disputed whether they are from the Qur'ân;[28] or what has become a general necessity, such as coming into contact with or touching [a woman]. So all of these are in contradiction to this principle [of abundant impetus].

The reply is that the *ifrâd* or the *qirân* of the Messenger of Allâh, صلى الله عليه وسلم, are of no necessity to be promulgated or proclaimed to all by the Messenger of Allâh, صلى الله عليه وسلم. Rather, no one need know this except for whomever [the Prophet] informs, or discloses his intention to inform him. Yet, his instruction to people concerning *ifrâd* and *qirân* together has been broadly disseminated.

As for his entrance into the Ka'ba and his prayer in it, this may have been with a few people or with one or two, which may

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[27]Consult Wensinck, *The Concordance et Indices de la Tradition Musulmane* , 3:161.

[28]The last two *sûras* of the Qur'ân, 13, 14.

not have occurred often. Even if it occurred often, there would not be abundant impetus to perpetuate its transmission, for it is not a principle of religion, nor is it one of its obligations or important factors.

As for his forceful entrance into Mecca, there are sound, widely-known reports indicating his entrance bearing arms and carrying standards, in full control and domination, and that he granted amnesty to whomever entered the house of Abû Sufyân or to whomever laid down his weapons and took refuge in the Ka'ba. All these reports are not disputed. However, some *fuqahâ'* have adduced that they entered peacefully based on what has been transmitted to the effect that he, صلى الله عليه وسلم, paid blood money for the people killed by Khâlid b. Walîd, رضي الله عنه. The occurrence of such controversy is possible for such individuals until it is removed by ratiocination. Also, this may have been on the basis of a particular prohibition for identified people for a special purpose, or that this should have occurred by a particular or specific prohibition on the part of particular people for special reasons.

As for the isolated sighting of the crescent by the bedouin, it is possible. Similar occurrences may take place on the first night of the month even in our times. Owing to the crescent being faint and thin, it is possible only for a sharp-sighted person's eye, who genuinely desires to seek it, to hit the place of the crescent—whether it is based on experience or chance.

As for the splitting of the moon, it is a sign that occurred at night while people slept and were heedless; and it only happened momentarily. So those who saw it were the ones among Quraysh

with whom the Prophet, صلى الله عليه وسلم, disputed and thus pointed it out to them. In addition, only a fraction [of the moon] split for a moment and returned complete. There are many occurrences of a shooting star or an earthquake or other frightening events, like wind and night storms, that no one pays attention to except for a few individuals. Add this to the fact that such things are only known to those who are told look for them. Also, the moon split following the statement and challenge [of the Quraysh]. Whosoever did not know about such an event and his sight fell upon it may have thought it was something illusionary which disappeared, or that it was a star under the moon that moved away from it, or a that a portion of cloud covered part of the moon. /1:144/ Thus, its transmission was not *mutawâtir*.

As for their [*mutawâtir*] transmission of the Qur'ân and not other major events, this is so for two reasons. One is that the impetus to transmit [things] in a perpetual manner did not increase after the establishment of prophethood and its independence on the basis of the Qur'ân due to the contentment with its establishment by the Qur'ân, which is the greatest of signs. Second, things other than the Qur'ân may have occurred only once in anyone's lifetime, or may have occurred in front of a few people, while [the Prophet] used to repeat the Qur'ân throughout his life, time after time. Furthermore, he used to deliberately address it to all of them, and he ordered them to preserve it and to recite it for him and to act accordingly.

As for the *mu'awwidhatân*, their broad transmission as being of the Qur'ân has been established like the other *sûras*—and Ibn

Mas'ûd, رضي الله عنه, never denied that they are of the Qur'ân. He denied recording them in the text, and also the recording of *al-Hamd*.[29] For, according to him, the *Sunna* was not to record except what the Prophet, صلى الله عليه وسلم, had ordered to be recorded and written. So when he found that he did not write these, nor did he hear the Prophet's command to write them, he then denied them. This was an interpretation, not a rejection of their being of the Qur'ân. If he had rejected this, it would have been a great departure from the truth, which cannot be attributed to a person like him, nor any one of the Companions.

As for the negligence of Christians to report the speech of Jesus, عليه السلام, in the cradle, this may be because he spoke only in the presence of a few people, and only once, in order to declare the innocence of Mary, عليها السلام, from what they have accused her of. so it may not have been disseminated. Therefore, certain knowledge did not accrue based on the statement of those from whom it was heard. Hence, it was obliterated.

As for Shu'ayb and other [prophets] like him, عليهم السلام, they did not have a *sharî'a* of their own, but called to the *sharî'a* of those preceding them. Therefore, there was no abundant impetus to report their miracles, for they did not have prominent miracles. But their truthfulness has been established on the basis of texts and divine reports from a prophet who has a miracle.

As for the report of touching or contacting the genitals[30] and

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[29]This refers to the first chapter of the Qur'ân, *The Opening*.

[30]Jurists have differed regarding the annullment of ablution

things that commonly occur, it is possible that the Messenger, عليه السلام, informed only a few people and then they would individually report it. That it was not popularized [by the Prophet] does not bring distress in the mind. There, nevertheless, would be abundant impetus to report it perpetually.

The Third Classification: [Reports] whose Truth or Falsehood is Unknown, thus [Judgment] on them is Necessarily Suspended

This [classification] includes all of the transmitted reports regarding the rules of the *Sharî'a* and worship, besides the two divisions mentioned. It includes every report whose truth or falsehood is unknown.

If it is said: The lack of evidence for a report's truth proves its falsehood. For if it were true, Allâh, تعالى, would not have isolated us from such a proof of its truth.

We shall say: Why is it impossible for Him to isolate us from a decisive proof of its truth? If this is reversed and said that its truth is known—for if it were false then Allâh, تعالى, would have not isolated us from a decisive proof of its falsehood—then this would be a response to this discourse. But how is this permissible, since from this it is necessary to conclude decisively the falsehood of every eyewitness whose truthfulness is not decisively established

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due to one's touching his or her genitals or the touching of a women by a man, or vice-versa. For details, see Zaḥîlî, *al-Fiqh al-Islâmî wa Adillatuhu*, 1:274-282; Zayla'î, *Naṣb al-Râya*, 1:60; and al-Farrâ', *al-'Udda*, 3:762.

as well as the infidelity and the immorality of every judge and *muftî* whose Islam and piety is not known decisively?

Similarly, every *qiyâs* and *Sharî'a* proof that is not conclusively held to be accurate, one must decisively pronounce it to be false. This is different than the case where a miracle is not demonstrated, yet one challenges to be a prophet. Therefore, we become certain of his falsehood, for a Prophet, صلى الله عليه وسلم, is one who charges us to believe in him. Yet belief without proof is impossible, as laying an impossible obligation is impossible. So from this we are certain that we have not been obligated to believe him, and he definitely was not a messenger to us.

As for a solitary report or the testimony of two, we are not charged by the *Sharî'a* to confirm their truth, but to act when its truthfulness is conceivable—and this did accrue, so acting is possible. Furthermore we would be right, even if they are a liars. But if we were to act in accordance with the deposition of a single witness, then we would be in the wrong, even if he be truthful.

If it is said: The establishment of a miracle has become necessary only to know [the Prophet's] truth, so we follow him in what he brings as *Sharî'a*. Thus, it is incumbent upon him to remove all doubts concerning the *Sharî'a* that he conveys verbally, and he must spread it to the extent of *tawâtur* so that certain knowledge can accrue to those whom he did not [directly] state it to.

We shall say: It is not absurd that the Lawgiver divides the *Sharî'a* into that which charges worshipping through knowledge

and action—where what you have mentioned in this regard would be necessary—and into that which charges us only to act according to the *Sharî'a*, but without having certain knowledge. Therefore, it is obligatory upon those who hear it from the Messenger to combine certain knowledge and action. But the obligation for those who were not present is action, not knowledge. Thus, action is anchored by a *ẕan* [working knowledge] of the truth in the report, even though he [the reporter] may be a liar in the sight of Allâh, تعالى. So, *ẕan* accrues through *qiyâs*, the testimony of one witness and an oath of a defendant, or an oath of a plaintiff, when the other person refuses to take an oath. We do not regard any of this as impossible.

DIVISION TWO OF THIS PRINCIPLE: SOLITARY REPORTS
Consisting of [Four] Chapters

Chapter One: The Establishment of the Rites of Worship Although they Fall Short of Yielding Certain Knowledge
This has four discussions

I. DISCUSSION: Know that in this context what we mean by solitary report is those reports which do not reach the point of *tawâtur* to yield certain knowledge. So, what has been transmitted by five or six individuals, for example, may be a solitary report.

As for the statement of the Messenger, عليه السلام, whose rectitude is known certainly, it is not called *solitary report*. If you know this, we shall say that solitary reports do not yield certain knowledge. This can be necessarily known.

We do not believe all that we hear. But, even if we believe and assume the contradiction of two reports, how can we believe in both opposites? What has been related from traditionists [*muhadidthîn*], namely that this necessarily yields certain knowledge, perhaps they mean that it yields knowledge on the basis of necessitating action, for sometimes *zan* is called' *ilm.*[31] Thus, some of them say that it yields outward knowledge, while certain knowledge neither has an outer nor an inner. But it is only *zan*, and they cannot hold a proof based on His statement, علمتموهن, "*If you ascertain that they are believing women. . . ,*"[32] thinking it means obvious [knowledge], while its intended meaning is actual knowledge by the declaration of *shahâda*, which is the manifest side of faith but not the interior side, where a person is not [legally] responsible or charged. Faith [proclaimed] by the tongue /1:146/ is called *imân*, figuratively. Nor can they hold a proof based on the saying of the Exalted, "*Do not follow that wherein you have no knowledge . . .*"[33] and that if reports do not yield certain knowledge, acting according to it is not permissible. For the intended meaning of this verse is to prevent a witness from decisively testifying, except on what he is certain of.

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[31]Ghazâlî here is pointing out that *zan*, i.e. knowledge appearing worthy of belief, is at times interchangable with '*ilm*, i.e. certain knowledge, and thus confuses those who do not recognize the usage of the terms and their contexts.

[32]Qur'ân, 60:10.

[33]Qur'ân, 17:36.

As for acting according to a solitary report, it is necessarily known by a decisive proof that necessitates action when truth is assumed, and the assumption accrues decisively. The obligatoriness of acting according to *ẓan* is also necessarily known, as is ruling according to the testimony of two, or the oath of a plaintiff in the event of the defendant's denial.

II. DISCUSSION: Some people deny on a rational basis the permissibility of worship according to solitary reports, its occurrence on the basis of revealed authority notwithstanding.

It should be said to them, "How do you know it is impossible? Through necessity? We differ with you about this—and dispute cannot occur in what is necessary. Or do you deny it by some proof?"

But they have no way to establish it. For were it impossible, its impossibility would be either per se or because of some evil that it begets. Yet it is not impossible per se; nor is its evil considered. Even if we do consider it, we do not concede it. For it is necessary to explain the signification of its evil.

If it is said: The signification of its evil is that when an individual transmits a report, say, regarding the shedding of blood or permitting intercourse, he may be lying. Yet it would be thought that this shedding blood is by the command of Allâh, تعالى, while it is not His command. How can it be permissible to be hasty based on ignorance? On the contrary, it is not permissible to rush after whoever we regard with doubt concerning the permissibility of

intercourse or the shedding of blood based on ignorance. It would be bad for the Lawgiver to abandon people to ignorance and to rush into falsehood based on speculation. Rather, when Allâh, تعالى, commands, He must make it known to us so that we are informed, regardless of our being obedient or disobedient.

The reply is that if this question issues from one who denies religion, we shall say to him, what is the impossibility of Allâh, تعالى, saying to His worshippers, "When a bird flies by and you think it is a crow, then I have made 'such and such' obligatory upon you, and I have made your supposition a sign for the necessity of acting, just as I have made the declination of the sun to be a sign for the obligatoriness of prayer." Therefore, *ẓan* itself would become the sign of obligatoriness, while the existence of *ẓan* is known through sense perception. Thus, obligatoriness becomes known. So, whoever performs the obligation in the state of *ẓan* has decisively fulfilled it and is right.

Accordingly, if it is permissible to make the declination of the sun a sign or thinking a bird is a crow, why is it not possible to make one's *ẓan* a sign? It should be said to him that when you have a working knowledge of the truth of a reporter, a witness, or an oath giver, rule by it [*ẓan*]. However, you are not charged through the certain knowledge of his truthfulness, but with acting when working knowledge of his truthfulness accrues. Furthermore, you are right and have fulfilled [your obligation], whether he is telling the truth or lying. You are not charged with having certain knowledge of his truthfulness, but with action in accordance with your *ẓan* that you feel in yourself.

This also is what we believe regarding *qiyâs*, the solitary report, ruling based on a witness or an oathgiver, and other than this. But if this emanates from a believer of the *Sharî'a*—but there is no way for him to do so, for he has been charged to act according to testimony, injunction, *fatwâ* [authoritative opinion], an eyewitnessing of the Ka'ba, and the report of the Messenger, صلى الله عليه وسلم, which total five.

Now, testimony can be regarded as giving decisive knowledge, like the testimony of the Messenger, صلى الله عليه وسلم, /1:147/ or the testimony of Khuzayma b. Thâbit[34] when the Messenger of Allâh, صلى الله عليه وسلم , confirmed his truthfulness, and the witness of Moses and Aaron and other prophets, Allâh's blessings be upon them. Their testimony may be regarded like that of others. So what it is assumed is appended to that which is decisive concerning the obligatoriness of action. And so it is with the *fatwâ* of the Prophet, صلى الله عليه وسلم, and his rule, which is decisive, and the *fatwâs* of other *imâms* or the injunctions of other judges, which are of *ẓan* and are appended to what is decisive. In addition, the Ka'ba is decisively known when eyewitnessed. Yet it is also known by *ẓan* through *ijtihâd*. Thus, acting is necessary upon *ẓan*, as it is necessary upon [one's] being an eyewitness.

Similarly, the report of the Messenger, صلى الله عليه وسلم, necessitates acting if it is *mutawâtir*. Why should it be particularly impossible for what is known through *ẓan* to be categorized as

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[34]A Companion from the Anṣâr. See Ibn H̲ajar, *al-Tahdhîb al-Tahdhîb*, (Beirut: Dâr al-Fikr, 1985), 3:121.

certain knowledge in making action mandatory?

Thus, whosoever wants to distinguish between these five things, as to their evil or goodness, there is no way for him to do so at all.

If it is said: Is it permissible to command acting based on the report of a *fâsiq*?[35]

We shall say: Some people have stated that it is permissible provided that truth is likely [to accrue]. To us, this condition is corrupt. Rather, just as it is permissible to make the motion of the *falak*[36] a sign for performing the obligation of prayers, it is likewise possible for the motion of a *fâsiq's* tongue to be a sign. For laying the obligation to act when the report exists is one thing, while the report being true or false is another.

III. DISCUSSION: Some people have held that reason indicates the mandatoriness of acting in accordance with solitary reports independent of the *Sharî'a* proofs.

They have supported this with two proofs.

The first of which is that when a *muftî* does not find decisive proof from the Book, *Ijmâ'*, or the *mutawâtir Sunna*, but finds a

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[35]The term refers to one who commits a great sin(s). See L. Gardet's article in *The Encyclopaedia of Islam*, 2:833-44.

[36]Ghazâlî here makes an analogy between the motion of the solar system (*falak*) that produces night and day — indicating the times for prayer — and the motion of the tongue stating reports, etc.

solitary report and does not rule according to it, then rules would be suspended. Since the Prophet, صلى الله عليه وسلم, was sent to *all* of [his] contemporaries, he needed to send envoys [carrying rules], for he could not verbally speak to everyone, nor could he broadly promulgate all the rules through *tawâtur* to everyone. For had he attempted to send the number required for *tawâtur* to every nation, the number of people in his town would not have been sufficient.

This is weak because if the *muftî* does not find decisive proofs, he has recourse to the state of *al-barâ'a al-asliyya* [the original state of freedom] and *istishâb*,[37] just as if he misses the solitary report.

As for the Messenger, صلى الله عليه وسلم, he is limited to those whom he can convey to. From among people, there were those on Islands to whom the *Sharî'a* was never conveyed, who therefore were not liable to its obligation, for commissioning all people is not mandatory. Of course, if a prophet were charged to commission all people and that he should not leave any single event without the rule of Allâh, تعالى, nor should he leave any person from responsibility, then for him it may be necessarily sufficient to rely on a solitary report.

The second proof is their position that the reporter's truthfulness is possible. So, if we do not act according to the solitary report, we will be abandoning the command of Allâh, تعالى, and the command of His Messenger, صلى الله عليه وسلم. Therefore, acting

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[37]See the introduction to this translation, 1:124-129.

is being prudent and resolute.

This is false on three accounts.

The **first** of them is that the reporter's lying is also possible. So our actions may be contrary to what is obligatory.

The **second** is that it is necessary to act based on the report of an unbeliever or a *fâsiq*, for their truthfulness is possible.

The **third** is that freedom from responsibility is ascertained by reason and original negation [of responsibility]. /1:148/ This cannot be abrogated by delusive imagination. Some have used this as proof for negating solitary reports, even though this is a corrupt argument. But it is better than the one stating that if the truth [of a solitary report] is possible, then one must act according to it.

IV. DISCUSSION: The correct position, which the majority in the preceding generations of the *ummah* held—that is, the Companions, the Successors, the *faqîhs*, and the theologians—is that it is not impossible, rationally, to fulfill *Sharî'a* charges based on solitary reports. Nor is it mandatory, rationally, to fulfill *Sharî'a* charges based on them. But, fulfilling *Sharî'a* obligations based on them has occurred in tradition.

The majority of the Mu'tazilites and those who follow them of the Zâhirites, like al-Qâsânî,[38] hold that it is not permissible to act according to a solitary report on grounds of tradition.[39]

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[38]Muhammad b. Ishâq al-Qasâni was a student of Dawûd al-Isbahânî, the founder of the Zâhirite school. See Ibn Hajar, *Tabsîr al-Muntabih bi Tahrîr al-Mushtabih*, 3:1147.

[39]For further discussion, see al-Bazdawi, *Kashf al-Asrâr*,

The falsity of their opinion is indicated in two decisive approaches. One is the *ijmâ'* of the Companions to accept solitary reports; the **second** is that there are *tawâtur* reports that the Messenger, صلى الله عليه وسلم, has sent governors and envoys to various territories, and he obliged the people of the territories to assent to what they transmit from the *Sharî'a.*

We shall resolve both of these approaches.

The first approach concerns what has come through *tawâtur* and become well known, like those practices of the Companions in numerous, countless events that were based on solitary reports, though none of them reached *tawâtur,* though certain knowledge accrues from their conjunction.

Here, we shall indicate some of them:

For exmple, there are many events that have been reported from 'Umar, رضي الله عنه. One is the story of the fetus.[40] 'Umar stood [before the Companions] and said about this, "I remind you of Allâh. Has any one of you heard from the Messenger, صلى الله عليه وسلم, anything about fetuses?" Haml b. Mâlik b. al-Nâbigha[41] stood and

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2:370; b. Hazm, *Ihkâm,* 1:107; Amidî, *Ihkâm,* 1:234; and al-Dumaynî, *Maqayîs Naqd Mutûn al-Sunna,* p. 276.

[40]For an elaborate discussion on the legal aspects concerning the fetus, see Muhammad Salam Madkûr's comprehensive, comparative *fiqh* work, *al-Janîn wa al-Ahkâm al-Muta'alliqatu bihi fî al-Fiqh al-Islâmî* (Cairo: Dâr al-Nahdah al-'Arabiyya, 1969). See also Kuwait Ministry of Awqâf and Islamic Affiars, *Mu'jam al-Fiqh al-Hanbalî,* (Kuwait: Ministry of Awqâf and Islamic Affiars Press, n. d), 1:206; and al-Zahîlî, *al-Fiqh al-Islâmî wa Adillatuhu* , 6:362-67.

[41]Consult Ibn Hajar, *al-Tahdhîb al-Tahdhiib,* 3:32.

said:

> I was between two females, [i.e., co-wives], and one of them hit the other with a rolling pin. The other, then, delivered a dead fetus. So, the Messenger of Allâh, صلى الله عليه وسلم, ruled that a prime male or female slave be freed.

'Umar, رضي الله عنه, replied:

> Had we not heard this, we would have ruled differently, that is, we would not have ruled for [the freeing of] a prime slave in the first place.

The death of the fetus is distinguished because their is doubt about whether it was originally alive.

Also, 'Umar, رضي الله عنه, used to hold that a woman could not inherit a share of the blood money of her [deceased] husband. But when al-Dahhâk reported to him that the Messenger of Allâh, صلى الله عليه وسلم, had written to him that he should give to the widow of Ushaym al-Dabâbî a share of his blood money, he ['Umar] then changed his opinion in this regard.

Another involves a question about the Magians, of which numerous reports have come down. 'Umar said:

> I do not know what to do with them. I beseech anyone who has heard something about them to report it to us.

Then 'Abd al-Rahmân b. 'Awf said:

> I bear witness that I heard the Messenger of Allâh, صلى الله عليه وسلم, say "Treat the Magians as you treat the People of the Book."

So he then collected *jizya* from them and confirmed the status of

their religion.

Also, there is was an occurrance during [the lifetimes] of 'Umar, 'Uthmân, and a great number of the Companions, رضي الله عنهم, where they changed their minds about cancelling the mandatoriness of making *ghusl* [bathing] when the two genitalia [male and female] touch. This was a result of the report of 'A'isha, رضي الله عنها, for she said, "I did this with the Messenger of Allâh, صلى الله عليه وسلم , and we made *ghusl*."

Then there is that which has come down correctly about 'Uthmân, رضي الله عنه, when he decided the case of the housing of a widow on the basis of the report of Farî'a, the daughter of Mâlik,[42] after he sent a message to her asking her about this.

Also, it is widely known that 'Alî, رضي الله عنه, whenever he accepted solitary reports /1:149/ relied on oaths, to the extent that he once said, according to a popular report:

> Whenever I heard a *hadîth* from the Messenger of Allâh, صلى الله عليه وسلم , Allâh has benefited me from it to whatever extent He willed. But if other than [the Prophet] related a report to me, I would seek an oath from him. If he complied, then I would believe him. Abû Bakr reported to me—and Abû Bakr spoke the truth when he said—"The Messenger of Allâh, صلى الله عليه وسلم , said that Allâh will forgive any worshipper, who after committing a sin. . . ."[43]

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[42]A daughter of Sinân, a women from the Ansâr of Medina. See Ibn Hajar, *Tahdhîb al-Tahdhîb*, 12:472.

[43]The following is the full of the *hadîth*, which Ghazâlî mentions, as reported by Ahmad b. Hanbal in his *Musnad* (Beirut: al-Maktab al-Islâmî, 1969), 1:10:

". . . Allâh will forgive any worshipper who after committing a sin perfoms ablution and prays two rak'as, then asks Allâh, the

So, 'Alî requested any reporter to take an oath, not because he accused him of lying, but for cautiousness in the narration of a *ḫadîth* at its face value, and to avoid the possibility of its words being changed such that the report would be transmitted on the basis of meaning, and so as not to have [reports] transmitted hastily through conjecture, but rather through actual hearing.

And from this is what has been transmitted from Zayd b. Thâbit, رضي الله عنه, namely that he used to hold that it was not permissible for a menstruating woman to leave [Mecca] unless the last rite she performed was the circumambulation around the House. He disapproved of Ibn 'Abbâs's disagreement with this. He was then told that Ibn 'Abbâs had asked such and such woman of the Anṣâr whether the Messenger of Allâh, صلى الله عليه وسلم, commanded her with this, and she reported to him. Therefore, Zayd b. Thâbit changed his opinion; laughing, he said to b. 'Abbâs, "I do not see anything other than you being right." Thus, he changed his opinion on the basis of an Anṣârî woman.

Also, there is what has been transmitted from Anas, رضي الله عنه, namely that he said:

> I was serving Abû 'Ubayda, Abû Ṯalha, and Ubay b. Ka'b with *fadikh*[44] drinks when someone came to us saying that wine

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Exalted, for forgiveness." Then the Prophet recited the verse [3:135], ". . . *Those who, when they commit an indecency or wrong themselves, remember Allâh, and pray forgiveness for their sins—and who shall forgive sins but Allâh?—and do not perservere in the things they did and that knowingly.*"

> has been forbidden. Upon this Abû Ṯalha stood and said, "O Anas, rise and shatter these jars." I then stood and went to our *mihrâs*[45] and I struck the jars against their bases until they broke.

And among these [examples] is what has become popular of the practice of the people of Qubâ'[46] when they changed their *qibla* based on a solitary report. One person came to them and informed them that the *qibla* had been changed. So on the basis of his report they turned toward the Ka'ba.

Another such example is what is well-known about b. 'Abbâs, رضي الله عنه, when it was said to him that such and such man from among the Muslims claims that Moses, al-Khadir's companion, was not the Moses of the Children of Israel, عليه السلام. Upon this, b. 'Abbâs said:

> This enemy of Allâh is lying. Ubay b. Ka'b has said to me, "The Messenger of Allâh, صلى الله عليه وسلم, addressed us and mentioned Moses and al-Khadir in a way indicating that Moses, al-Khadir's companion, was in fact the Moses of the Children of Israel."

Therefore, Ibn 'Abbâs went beyond acting upon a solitary report

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[44] According to Ibn Manẕûr, *Lisân*, 3:45, this is a type of wine made from grape juice.

[45] According to Lane, *Arabic-English Lexicon*, 8:2891, this is a large, heavy, and bulky stone vessel which was used to store water or to grind grain.

[46] According to Yâqût, *Mu'jam al-Buldân*, 4:301-03, Qubâ' was originally the name of a well near Medina, which hence became the name of a nearby village.

and hastened to call its source a liar, and did so decisively, because of the report of Ubay b. Ka‘b.

Also, there is what has been reported from Abû al-Dardâ' that when Mu‘âwiyya sold a utensil made of gold and silver for greater than its weight, Abû Dardâ' told him, "I heard the Messenger of Allâh, صلى الله عليه وسلم, forbidding this." Mu‘âwiya replied to him, "I see no harm in this." Abû al-Dardâ' said:

> Who would excuse me if I requite Mu‘âwiyya, for I relate to him from the Messenger of Allâh, صلى الله عليه وسلم, and he tells me his opinion. I shall never live with you in the same land.

Then, there is what has been popularly reported from all of them referring to ‘A'isha, Hafsa, and Fâtima bint Asad, and to countless other women, as well as to Zayd, Usâma b. Zayd, **/1:150/** and other Companions, men, women, slaves, and clients. Thus, continued the practice of the Successors after them, to the extent that al-Shâfi‘î, رحمه الله, said:

> We found ‘Alî b. Husayn, رضي الله عنه, relying on solitary reports, as well as Muhammad b. ‘Alî, Jubayr b. Mut‘im, Nâfi‘ b. Jubayr, Khârija b. Zayd, Abû Salama b. ‘Abd al-Rahmân, Sulaymân b. Yasâr, ‘Atâ' b. Yasâr, as was the case with Tâwûs, ‘Atâ', and Mujâhid.

Sa‘îd b. al-Musayyib used to say, "Abû Sa‘îd al-Khudrî related to me from the Prophet, صلى الله عليه وسلم, on the trade of currencies." Thus, he confirmed his report as a *Sunna* and said, "Abû Hurayra told me . . ."

‘Urwa b. Zubayr also said, " ‘A'isha told me that the Messenger of Allâh, صلى الله عليه وسلم , ruled for *al-kharaj bi al-*

damân."[47] On this basis, he objected to 'Umar b. 'Abd al-'Azîz, who reversed his judgment upon hearing the report, and so it was with Maysara in Yemen and Makhûl in Syria.

Also, the *fiqhîs* of al-Basra, like al-Hasan and Ibn Sirîn, and those of Kûfa and their successors, like 'Alqama, al-Aswad, al-Shi'bî, Masrûq, and the *fuqahâ'* after them. No one has objected to them at any time. If their were any objections to this, it would have been transmitted to us. In accordance with common practice, it would have necessarily become well known. There would be a great impetus to have transmitted these objections just as there was impetus to transmit practice based on [solitary report]. It has, therefore, been established that there was a consensus of the earliest generation upon this and that dispute occurred only after them.[48]

If it is said: Perhaps they have used solitary reports along with circumstantial evidence in practice, or other accompanying reports, or other phenomena, standards, or reasons which

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[47]The term has been attributed to the Prophet and used by most *fuqahâ'* to mean that the revenue generated from the purchase of a slave or other properties belongs to the purchaser if he discovers a fault which the seller had neglected to mention; the purchaser is entitled to return his purchase and also receive back his payment in full. See Lane, *Arabic-English Lexicon*, 2:719; and Qal'ajî, *Mu'jam Lughat al-Fuqahâ*, p. 194.

[48]Ghazâlî here summarizes al-Shâfi'î's argument in defense of solitary report. For the full text see al-Shâfi'î, *al-Risâla*, pp. 401-460

accompanied them; but not simply on the basis of these reports as you have claimed, as in your statement: Their practice with regard to general statements, or the imperative or prohibitive moods, is not a decisive textual proof that they have acted simply based on them. Rather, they have acted based on them together with other circumstantial evidence.

We shall say: [This is] because no words have been transmitted from them and we have only to know through the mood's being a command, prohibition, or general statement. Furthermore, they have said here, "But for this [report] we would have ruled differently." Ibn 'Umar, رَضِيَ الله عنهما, has explicitly stated that they have changed their position regarding sharecropping and the contact of the two genitalia based on the report of 'A'isha, رَضِيَ الله عنها. Why should it not be so! while the general, imperative, and prohibitive moods are never free from circumstantial evidence about the condition of the commanded, the command, and the commander?

As for what a reporter transmits from the Messenger of Allâh, صلى الله عَلَيْهِ وَسَلَّم, what is conjoined to it that causes it be a proof? Thus, determining this is like determining the circumstantial evidence of their practice based on the text of the Qur'ân, *mutawâtir* reports, or *Ijmâ'*. But this would nullify all these proofs. In sum, asking them to seek reports has no other motivation than acting accordance with them.

If it is said: They have also abandoned the practice of many reports.

We shall say: This is so because of the absence of conditions rendering them acceptable—as will follow [below]—just as they have not proceeded to act in accordance with certain texts of the Qur'ân, or *mutawâtir* reports. For they came to know of their abrogation, the lapse of the command, or of the disappearance of that to which /1:151/ the address pertains.

The **second** proof is what has been transmitted through *tawâtur*, namely that the Messenger of Allâh, صلى الله عليه وسلم , dispatched governors, judges, envoys, and mediators—but each of them individually to various regions only to collect *zakât*, or cancel or confirm pacts.

The following are examples of this:

- He appointed Abû Bakr as an *amîr* of the *Hajj* in the ninth year.

- He sent 'Alî, رضي الله عنه, with "Sûrat Barâ'a," charging him to cancel the pacts and agreements that existed between the Prophet, صلى الله عليه وسلم, and the unbelievers.

- He appointed 'Umar, رضي الله عنه , to collect *zakât;* he appointed Mu'âdh to collect *zakât* from Yemen and to govern its people.

- He dispatched 'Uthmân b. 'Affân, رضي الله عنه, to the people of Mecca carrying and transmitting a message on his behalf (where [the Prophet] was told that the Qurayshites had assassinated 'Uthmân, and he became disturbed and for this reason conducted the *Bay'a* of *Ridwân*, saying, "By Allâh, if they did kill him, I shall certainly light the fire of war against them").

- He, صلى الله عليه وسلم, appointed Qays b. 'Asim to collect *zakât*

> and duties, as [he did] with Mâlik b. Nuwayrah, Zubruqân b. Badr, Zayd b. Hârithah, 'Amr b. al-'As, 'Amr b. Hazm, Usâma b. Zayd, 'Abd al-Rahmân b. 'Awf, Abû 'Ubaydah b. al-Jarrâh, and others whose mention would be lengthy.

Moreover, the specialists of *sîra* have unanimously established that he used to enjoin the people of the outer regions to accept the statements of his envoys, mediators, and governors. If he would have needed to send with every envoy the required number for *tawâtur*, not even all of his Companions would be sufficient for this, and his *Dâr al-Hijra* [i.e. Medina] would have become empty of his Companions and supporters. Consequently, his enemies from among the Jews and others would have overpowered him, and the order and management of affairs would have been upset. This is clearly absurd imagination.

If it is said: He, صلى الله عليه وسلم, had verbally and through *mutawâtir* reports informed them [the outer regions] of the details of *zakât* and only sent the collectors to collect it.

We shall say: Why is it necessary for them to believe their claim of collection while they are [only] individuals? Moreover, his dispatches, صلى الله عليه وسلم, were not only for collection of *zakât*, but also for teaching them religion, arbitrating between disputants, and explaining the duties of the *Shari'a*.

If it is said: Then it must be necessary for them to accept the essentials of prayer and *zakât*, as well as the essentials of the mission, the message, and the miracle [of the Prophet].

We shall say: As for the essentials of *zakât* and prayer, it is incumbent to accept them because the [envoys] were dispatched to explain the duties of the *Sharî'a* after the promulgation of the essentials of the mission, while it is not [incumbent] with regard to the essentials of the message, faith, and the miracles of his Prophethood. For how could an envoy of the Messenger of Allâh, صلى الله عليه وسلم , say, "He has made it obligatory upon you to believe me," while they were not familiar with his messengership. But after believing in him, it becomes possible for them to give heed to the envoys conveying his command and to listen to them.

If it is said: Accepting a solitary report is necessary only if there is a decisive proof indicating the obligatoriness of acting on its basis, such as *Ijmâ'* and *tawâtur* indicate proof according to you. But on what basis would those [people] believe the governors if they said, "It is obligatory for you to act according to our statement?"

We shall say: It has been reported to them by way of *tawâtur* from the *sîra* of the Messenger of Allâh, صلى الله عليه وسلم, /1:152/ that he dispatched governors and envoys individually, like other dignitaries and leaders. But were it not for their knowledge of this, it would have been possible for any doubter to dispute this if doubt occurred. But with circumstantial evidence, doubt rarely arises about this. For if someone comes to our land with a decree of his appointment as judge, no doubt contends with us about his truthfulness, even though it has not come to us through *tawâtur*, but through circumstantial evidence, namely awareness of the

scribe's writing, the unlikelihood of his boldness to lie while being exposed to danger, and so on.

The **third** proof is that a common person, according to consensus, is ordered to follow a *muftî* and believe him, although he [the *muftî*] may relate to him his conjecture. Therefore, a person who reports based on a revealed authority, which he does not doubt, is more deserving of assent. But lying and error are possible on the part of both the *muftî* and the reporter. Indeed, a mistake on the part of a reporter is less likely because every *mujtahid*, even when he is correct, is so only if he has not fallen short of completing his examination. But it may be that he thinks that he did not fall short of completing it, while he did. This[49] is more acceptable on the part of, say, whoever permits adherence to a follower of al-Shâfi'î, رَحِمَهُ الله, when he reports from his *madhhab*; for if he transmits the opinion of others, why should he not report [his own *madhhab's*] statements?

If it is said: This *qiyâs* yields only conjecture. But it *is not* permissible to establish principles on the basis of conjecture and *qiyâs*, while acting on the basis of a solitary report *is* a principle. How could this not be so, while the tendency of conjecture is not to enlighten? Yet a *mujtahid* is one to whom recourse is necessary. Thus, if a common man is obliged to obtain *ijtihâd*, it would become impossible, accordingly. Hence, he is compelled to follow the *muftî*.

[49]This refers to the beginning of paragraph.

We shall say: There is no necessity for this. Rather one should have recourse to the *al-barâ'a al-asliyya* [original state of freedom] if there is no way for him to have knowledge, just as, according to you, it becomes necessary for the *mufti*—when *tawâtur* becomes impossible and a solitary report is related to him—to reject it and refer to *al-barâ'a al-asliyya*. Furthermore, we say that this is not conjectural *qiyâs*. Rather, it is decisively proven to be of similar meaning. For if it is valid to act on the basis of a solitary report in matters of marriage, then we should regard it as decisive in sales transactions. Variation in what is reported makes no difference. So here there is no difference except with the source of the report. For the *muftî* reports on the basis of his conjecture, while the transmitter reports the statement of someone else—just as there is no discrimination with two witnesses as to whether they report about themselves or others, as to the integrity of others or their own conjecture about others' trustworthiness.

The fourth proof is His statement, تعالى:

> *. . . If a ta'ifah [contingent] from every expedition remained behind, devoting themselves to acquiring deeper knowledge of religion and admonishing their people when they return to them . . . .*[50]

A '*ta'ifah* 'is a small number of people, say three, and certain knowledge does not accrue with their statement. But this is subject to examination; for if it is decisive, then it is so in relation to the

[50]Qur'ân, 9:122.

mandatoriness of admonition, but not in relation to the mandatoriness of action on the part of the admonisher, since he is included in the admonition. Similarly, it is necessary for a lone witness to establish testimony, not to act upon it alone, until it is corroborated by other [evidence]. This objection is the one that weakens [their argument], as does holding to His statement, تعالى , "*. . . And those who conceal what We have sent down from the clear signs and guidance . . .* ,"[51] and his saying, صلى الله عليه وسلم , "May Allâh make prosperous he who heard my speech, retains it, and then delivers it as he has heard it. . . ." /1:153/ and others.

Know that the opponent in this issue has two doubts:

The first is their statement that the establishment of solitary reports has no basis save *Ijmâ'*. But how can this be claimed, while there were none from among the Companions but he [at times] rejected solitary reports? The following are examples of this:

The Messenger of Allâh, صلى الله عليه وسلم, hestitated to accept the report of Dhû al-Yadayn that he [the Prophet] had made *salâm* [indicating the end of prayer] after just two [*rak'as*], until he asked Abû Bakr and 'Umar, رضي الله عنهما, and they confirmed what he said. Then he [the Prophet] performed the prostration of forgetfulness;

Abû Bakr, رضي الله عنه, rejected [the report of] al-Mughîrah b. Shu'ba, concerning a grandmother's[52] share of inheritance until

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[51]Qur'ân, 2:159.

[52]In the two available editions, the text reads as "grandfather," which is a misprint according to the sources citing the *hadîth*. See Wensinck, *Concordance et Indices de la Tradition*

Muhammad b. Maslimah reported to him in collaboration with al-Mughîrah;

Abû Bakr and 'Umar rejected 'Uthmân's report, رَضِيَ الله عنهم, when he related that he sought permission to return al-Hakam b. Abî al-'As. They asked him for someone to testify on this with him;

Also it has been widely reported that 'Umar, رَضِيَ الله عنه, rejected Abû Mûsa al-Ash'âri's report about permission [to leave one's door] until Abû Sa'îd al-Khudrî, رَضِيَ الله عنه, testified for him;

'Alî, رَضِيَ الله عنه, [rejected] Abû Sinân al-Ashjâ'î's report concerning the story of Burû' bint Wâshaq. Moreover, it has been established about ['Alî] that he used to ask for an oath upon the reporting [to him] of a *hadîth*;

'A'isha, رَضِيَ الله عنها, rejected 'Abd Allâh b. 'Umar's report regarding punishment [in the grave] for a deceased person on account of one's relatives' bewailing;

Also, it is known that 'Umar prohibited Abû Mûsa and Abû Hurayra from reporting from the *hadîth* of the Messenger of Allâh, صلى الله عليه وسلم;

And other such [examples] abound.

Most of these reports indicate the opinions of those who require a certain number of reporters and not the opinion of those who require *tawâtur*, for they never assembled nor, therefore, waited for *tawâtur* to occur.

But we shall say, in reply to what they have asked about, that

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Musulmane , 2:443-44; and al-Zahîlî, *al-Fiqh al-Islâmî wa Adillatuhu*, 8:297-308.

what we have reported is decisive concerning their [the Companion's] practice. Moreover, what you have mentioned is refutation on the basis of non-essential causes which do not indicate the falsity of the principle— just as their rejection of some of the texts of the Qur'ân, their abandonment of some forms of *qiyâs*, and a judge's rejection of certain testimonies do not indicate the falsity of the [corresponding] principle.

Let us point out various alternative interpretations:

As for the hesitation of the Messenger of Allâh, صلى الله عليه وسلم, with Dhû al-Yadayn, this is liable to three interpretations:

The **first** is that he [the Prophet] may have considered [this to be] illusion on his [Dhu al-Yadayn's] part because of the large number of the congregation and the unlikelihood of him alone being aware of it while all the rest were heedless. Error on his part was more likely than heedlessness on the part of the large congregation. Once the signs of illusion appear then suspension of judgment becomes necessary.

The **second** is that even if he knew of his truthfulness, it is possible that the reason of suspension of judgment was to teach them the necessity of suspension in similar cases. If he did not suspend [judgment], then affirming by way of the silence of the group would become an established *Sunna*, so he cut this possibility.

The **third** is that Dhû al-Yadayn made a statement that if known to be true its effect would have become evident and they would concern themselves with it. So, it is associated with testimony. Therefore, he did not accept the statement of just one

person regarding it.

The strongest [of the interpretations] is what we have mentioned above. Certainly, if one who requires the [legal] number of testimony holds to this, then it is necessary for him to require three. Furthermore, it is necessary that they must be among a large congregation, where the remaining /1:154/ keep silent, for this is the way it was.

As for Abû Bakr's hesitation concerning the *hadîth* of al-Mughîrah, رَضِيَ الله عَنْهُ, on the share of inheritance of the grandmother, perhaps there was a reason necessitating hesitation. It may have been that no one else was aware of it; or it may have been for [Abû Bakr] to see whether it was an established or abrogated rule, or to know whether others had a report similar to his [al-Mughîrah] so that the rule would be stronger, or, if contrary, removed; or perhaps he hesitated while waiting for additional support, just as a judge seeks corroborative support after the testimony of the two witnesses—not for the purpose of rejecting their testimony—but in order to pass judgement if he does not find additional support; or Abû Bakr may have demonstrated hesitation so that haste in reporting carelessly would not occur often.

It is necessary to understand [his hesitation] in accordance with this. For it has been confirmed about him [Abû Bakr] decisively that he accepted solitary reports and withheld denial against those who held them.

As for the rejection of 'Uthmân's *hadîth* concerning al-Hakam b. Abû al-'As, it may have been due to its being a report that established a right for a [specific] person. Thus, like a testimony, it

is not established by the statement of one person. Or [perhaps] he hesitated because of 'Uthmân's kinship with al-Hakam, since he was known for his attachment to his relatives. Thus, he [Abû Bakr] hesitated in order to exonerate his ['Uthmân's] honor and status, so that a stubborn and obstinate person would not hold that he said this because of his kinship—and this has been established by the statements of others. Or it may be that they hesitated in order to establish for people the practice of restraint concerning the right of a friendly near relative so that verification in similar cases would be learned.

As for the report of Abû Mûsa seeking permission, he was in need of it in order to repeal himself from 'Umar's practice. For he left 'Umar's door after knocking three times, as though he were above waiting at his door. He ['Umar] feared, then, that this would become a precedent for others, that is, to report *hadîth* for personal purposes. The proof of this is that when Abû Mûsa returned with Abû Sa'îd al-Khudrî who testified on his behalf, 'Umar said, "It was not because I suspected you, but I was afraid that people would relate fabrications to the Messenger of Allâh, صلى الله عليه وسلم." It is permissible for the political authority to hesitate even without suspicion in similar cases. Why should it not be so! while similar reports cannot be equal in their prominence and in their rectitude to our [cited] *hadîths'* reporting their acceptance [of solitary reports].

As for 'Alî's rejection of al-Ashja'î, he has already mentioned his reason in saying, "How can we accept the statement of a bedouin who urinates on his heels," demonstrating that 'Alî did not

know his trustworthiness and exactitude. This is why he attributed to him crudeness and abandonment of cleanliness after urinating.

This is similar to what 'Umar said about Fatima b. Qays regarding the *hadîth* on residence:

> We cannot abandon the Book of our Lord and the *Sunna* of our Prophet for a statement of a woman whom we do not know whether she is telling the truth or lying.

These, then, are ways through which hesitation may be accounted for with reference to the reports.

The Second Doubt. They hold to His statements, تعالى :

> . . .*And do not concern yourself with anything which you have no knowledge of*[53]

> . . . *Saying to Allâh which you have no knowledge of*[54]

> . . . *And we can bear witness to more than has come known to us*[55]

> . . . *If a fâsiq comes to you with any news, ascertain the truth lest you harm a people in ignorance*[56]

claiming that ignorance ocurs in the statements of trustworthy

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[53]Qur'ân, 17:36.

[54] Qur'ân,7:33, where this quotation comes as part of a list of forbidden things.

[55]Qur'ân, 12:81.

[56]Qur'ân, 49:6.

witnesses.

This is a false argument on several grounds:

First, their denial of the assertion of solitary reports is not known through any decisive proof. In fact, it is liable to error. Therefore, it is a judgment without certain knowledge.

Second, the mandatoriness of acting on their bases is known through the decisive proof of *Ijmâ'*. Therefore, there is no ignorance in it.

Third, what is intended from these verses is the prevention of the witness from decisively testifying on that which he did not see or hear, or giving *fatwâ* on the basis of what he did not report or on the basis of what has not been transmitted by trustworthy persons.

Fourth, if this were to constitute a rejection of the solitary report then a rejection of the testimony of two, four, a man and two women, judgment based on an oath, and so on could also adduced. Just as the mandatoriness of judging based on these matters has been known decisively in the Qur'ân, even though lying is possible, it is the same case with reports.

Fifth, the prohibition of installing Caliphs and judges is necessary because we are not certain of their faith, let alone their piousness. Nor do we know certainly the purity from *janâba*[57] or

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[57]This term signifies a person who has the obligation of performing a total ablution (*ghusl*) because of sexual intercourse or seminal discharge. For details of its rules and conditions, see al-Zahîlî, *al-Fiqh al-Islâmî wa Adillatuhu*, 1:311, 58, 62; for praying behind an *imâm* in relation to *janâba*, see 2:177, 79, 99.

hadath[58] of a prayer's *imâm*. Thus no one must follow them.

Chapter Two: The Conditions of the Transmitter and His Character

Now, if the necessity to act according to a solitary report is established, then know that not all reports are acceptable. First, however, understand that by *acceptance* we do not mean affirmation, nor by *rejection* do we mean denial. Rather, it is incumbent upon us to accept the statement of a trustworthy reporter though he may lie or err, while it is not permissible to accept the statement of a *fâsiq* though he may tell the truth. Rather, by *accepted* we mean that necessitates action, and by *rejection* we mean that which we bear no responsibility to act according to.

What is acceptable is the transmission of every locus of obligation who is trustworthy, a Muslim, and accurate, whether he is transmitting alone or with others. So these are five points which we must examine.

First, the transmission of an *individual* is accepted even though his testimony is not acceptable.[59] This is contrary to al-Jubbâ'î and others who require a specific count, not accepting less than the statements of two men; and then, the transmission of

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[58]This refers to the state of annuling legal purity, thus preventing one from performing prayer. For details see Zaḫîlî, *al-Fiqh al-Islâmî wa Adillatuhu*, 1:284, 94, and 2:17.

[59]Ghazâlî, *al-Mankhûl*, p. 255.

neither one is acceptable unless each transmits it from another two men [and so on]—until it reaches our times, when it would be transmitted by a great number, to the degree it would not be possible to establish any *hadîth* at all.

Some people say that not less than four is necessary, as taken from the [number] of witnesses for adultery. But as a proof of the falsity of their position, we shall say that if accepting the statements of individuals is established, even though it does not yield certain knowledge, then setting conditions is dogmatism and cannot be known accept on the basis of a text, or *qiyâs* based on a text, though there is no way to claim a text.

As for what has been transmitted from the Companions seeking corroboration, this relates to two or three incidents, for reasons we have mentioned. But as for what they have decided on, based on the statements of 'A'isha alone, or the wives of the Messenger of Allâh, صلى الله عليه وسلم, or 'Abd al-Rahmân b. 'Awf, or Abû Hurayra, and others, it is beyond encompassment. Thus, we know decisively from their conditions that they accepted solitary report, just as we also decisively know the rejection of a [lone] individual's testimony.

If they rely on analogy to testimony—which is a false analogy, for it is known that there is a distinction based on their practice—then why should analogy not be applied on requiring freedom, maleness, and four [witnesses] as in reporting fornication; or with regard to sighting the crescent, or the testimony of a midwife, which are the same. Abiding by this is a violation of *ijmâ'*. There should be no distinction if /1:156/ *qiyâs* is necessarily

applied.

The second condition—which is actually the first, for count, according to us, is not a condition—is responsibility. Thus, the transmission of a minor is not accepted, because he does not fear Allâh, تعالى , and has no deterrent from lying. Therefore, relying on his statement is not established. In accepting testimony, they have relied also on inspired peace of mind[60] and the accrual of *zan*. A *fâsiq* is more reliable than a minor because he is fearful of Allâh, تعالى, and has a deterrent in his religion and reason, while a minor does not fear Allâh, تعالى, at all. Therefore, he is rejected, *a fortiori*.

It is more appropriate to hold this than to posit the rejection of his admission. Certainly, if his statement regarding what he reports about himself is not accepted, then not accepting what he reports about others is more appropriate. For this can be refuted by the case of a slave whose admission is not accepted while his report is.[61] And certainly if the reason is that it encompasses the authority of a master and is withheld from him [the slave], then the authority of a child is also withheld from him in his [own] interest. Therefore, concerning what is not related to him, his statement may have an effect, as well as his condition, to the extent that it is permissible to follow him [in prayer] based on his statement that

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[60]Ghazâlî reapetedly uses the term *sukûn al-nafs*, meaning relying or trusting upon the validity or truth of something based on inner tranquility or an ease or peace of mind. For the linguistic meaning

[61]For the status of the slave's testimony and admission, see Zahîlî, *al-Fiqh al-Islâmî wa Adillatah*, 6:563 and 6:16, respectively.

he is ritually pure and does not pray unless he is so. In so doing, it is like following the righteous or the unrighteous, and so it is with a minor and an adult.

The testimony of a *fâsiq* is not accepted, and the minor is bolder than him in lying. But if the minor was capable of discernment when he received the report, and of age when he delivered it, then it is acceptable, for there is no flaw in his reception nor in his delivery. A proof for accepting his [the minor's] report is the consensus of the Companions to accept the reports of Ibn 'Abbâs, b. Zubayr, Nu'mân b. Bashîr, and others from among the minors of the Companions, without distinction between what they have heard before or after coming of age. For this reason, they were accustomed to bringing children into their sessions. Based on this, the earlier and later generations proceeded to bring minors to reporting sessions and accepted their testimony with regard to what they have received while juveniles.

If it is said: Some scholars have stated that the testimony of minors is accepted when concerning mischief that occurs between them.

We shall say: Their adduction is based on circumstantial evidences if they [minors] are numerous and they report before dispersing. But if they disperse, they become liable to false instruction and have no deterrent. So, whoever rules based on this does so only because of the frequency of mischief between them and the great need of knowing by way of circumstantial evidences. Therefore, this does not parallel testimony.

The **third** condition is that he should be accurate. So, whoever at the time of receiving [a report] was not capable of discernment, or was inattentive, or does not properly retain what he has received, delivering it in the same form, there should be no reliance on his statement, even if he was not a *fâsiq*.

The **fourth** condition is that he be Muslim, for there is no dispute that the report of an unbeliever is not accepted because he is suspected with respect to religion, even though their testimonies about one another are accepted according to Abû Hanîfa, who does not dispute rejecting their reports. Reliance in rejecting it is based on the *ijmâ'* resolved to deprive him of this capacity in religion, even if he is trustworthy in his own religion. This is more appropriate than our statement that a *fâsiq's* testimony is rejected, for unbelief is the greatest form of *fisq*. /1:157/ And Allâh, تعالى , has said, ". . . *If a* fâsiq *comes to you with any news, ascertain* [the truth] *lest you harm a people in ignorance* . . ."[62] This is because a *fâsiq* is suspected for his boldness in disobeying, while the fearful unbeliever may not be suspected. Still, reliance is on *ijmâ'* concerning depriving the unbeliever from this status.

If it is said: This is in reference to the Jews, Christians, and those who do not believe in our religion—since it is not suitable policy for them to exercise authority in a religion in which they do not recognize its reverence. But what do you say concerning *al-kâfir muta'awwil*, who holds grave innovation, such that it

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[62]Qur'ân, 49:6.

necessitates charging him with unbelief on its basis, although he reveres religion and refrains from disobedience while not knowing he is an unbeliever. Why should not his report be accepted? Indeed, al-Shâfi'î accepted the report of some of the grave innovators, even though they were *fâsiqs* because of their innovation, for they were *fâsiqs* because of their misinterpretation.

We shall say: With regard to the report of the grave innovator, who is a *muta'awwil*, a discussion will follow.

As for the unbeliever, even though he is a *muta'awwil*, his report is not accepted, since all unbelievers are *muta'awwil*. Thus, a Jew also does not know that he is an unbeliever. As for he who is not a *muta'awwil*, but is obstinate by tongue after knowing the truth in his heart, such cases are rare. The piety of a *muta'awwil*, such that he does not tell a lie, is like the piety of a Christian, which should be disregarded. Rather, his status is acquired only on the basis of Islam. This is known through *ijmâ'*, not through *qiyâs*.

The fifth condition is trustworthiness.[63] Allâh, تعالى , has said, ". . . *If a* fâsiq *comes to you with any news, ascertain* [*the truth*] *lest you harm a people in ignorance* . . . ."[64] This forbids against relying on the statement of a *fâsiq*, and it is a proof for requiring trustworthiness in transmission and testimony.

Trustworthiness expresses uprightness in conduct and in

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[63]Trustworthiness (*'adâla*) is the quality of religious piety and personal morality which lends legal credibility to a reporter or a witness.

[64]Qur'ân, 49:6.

religion and is reducible to a stable disposition of the heart that enforces consistency of both righteousness and virtuousness so that trust of the people in one's truthfulness accrues. For there is no trust in the statement of a person who does not fear Allâh, تعالى, in such a manner that deters him from lying. Furthermore, there is no dispute concerning the fact that impeccability from all sins is not required. Yet neither is it sufficient to avoid major sins. Rather, some minor ones void [trustworthiness], like stealing an onion, the deliberate undermeasuring of grain, and, in general, all that indicates the lowliness of one's religion, to the extent of being bold in lying for worldly gains.

Why should this not be so! while it is required for trustworthiness that one refrain from some permissibles that injure one's credibility or virtuousness, such as eating en route, urinating in the streets, accompanying the wicked, and jesting excessively. The governing criterion in this, outside of the locus of *ijmâ'*, is that it must refer to the *ijtihâd* of a judge. So that which indicates to him his boldness in lying, is the basis for his [the judge] rejection of the testimony, and what does not is not.

Now this differs with respect to various *mujtahids*; but detailing this belongs to *fiqh* and not to *uṣûl*. There may be a person who is accustomed to backbiting and the judge is aware of this being his habit which he cannot refrain from. But if he was forced to testify falsely he would not testify at all. Therefore, accepting his testimony based on *ijtihâd* is permissible in this case; and this differs in the customs of various lands. Also, the position of various people differ in regard to the gravity of some minor

[sins] versus others.

I. **DISCUSSION**: Some people of Iraq say that trustworthiness expresses only the manifesting of Islam and staying free from any open *fisq*. So every unacknowledged Muslim, according to them, is trustworthy. But according to us, his trustworthiness /1:158/ is not acknowledged accept through familiarity with his inner character and exploring his public and private conduct. Indications of the falsity of their position are as follows.

First, a *fâsiq's* testimony and transmission are rejected based on the text of the Qur'ân and on our knowledge that the proof of accepting solitary report is its acceptance by the Companions and their *ijmâ'*; for this has not been reported from them save in the case of the trustworthy. But, if a *fâsiq's* transmission is accepted it should be through proof of *ijmâ'* or his analogy to the trustworthy person, who is accepted by all. Yet there is no consensus on a *fâsiq;* nor does he resemble a trustworthy person concerning the accrual of trust in his statements. Therefore, *fisq* hinders transmission, like childhood, unbelief, and slavery with regard to testimony. The status of an unacknowledged person regarding these characters is that his statement cannot be accepted.

Similar to this is the status of an unacknowledged person with regard to *fisq*, for if he is a *fâsiq* his transmission is rejected; and if he is trustworthy, he is also not accepted because of unfamiliarity with him, exactly as we would be in doubt about his being a child, slave, or unbeliever—there is no difference.

Second, the testimony of the unacknowledged is not accepted. Neither is his transmission. Even though they disallow his testimony with regard to possessions, they indeed assent to testimony with regard to penalties. Again, the unacknowledged is rejected with regard to penalties. The manner of trust concerning transmission and testimony is one, even though they differ in the rest of the conditions.

Third, for the unfamiliar *muftî* —whom it is not known whether he has reached the rank of *ijtihâd* or not—it is not permissible for the common person to accept his statement, and such is the case if one does not know whether he is a scholar or not. Rather, they assented to the fact that if neither his trustworthiness nor his *fisq* is known, he is not accepted. What is the difference then between the reporting of the *muftî* on his own *ijtihâd* and him relating a report from others?

Fourth, the testimony of a secondary [witness] should not be heard as long as he does not identify the primary, who cannot be unacknowledged by the judge. Accordingly, it would not be necessary to specify and identify him if the statement of the unacknowledged were acceptable. This also answers those who accept the testimony of the unacknowledged, which cannot be contested.

If it is said: It is incumbent for him to mention the primary [witness] so the judge may recognize his [the unacknowledged's] *fisq* and therefore reject his [the primary's] testimony.

We shall say: If the definition of trustworthiness is his Islam

without manifestations of *fisq*, then this [condition] has been established. Therefore, it is not necessary to investigate until *fisq* is manifested, which voids what he has mentioned by way of *mursal* [unconnected] report, for they did not make it necessary to identify the *shaykh* [the source], while it may be that the transmitter knows his *fisq*.

Fifth, our reliance on solitary reports is from the practice of the Companions, but they have rejected the report of the unacknowledged. So 'Umar, رضي الله عنه , rejected the report of Fâṯima b. Qays saying, "How could we accept a statement of a woman whom we do not know whether she is telling the truth or lying." And 'Alî rejected al-Ashja'î's report on *al-Mufawwiḏa*[65] and he put reporters to oath, while putting to oath only those whose trustworthiness, not *fisq*, was outwardly known. Also, any of them [the Companions] who rejected the statement of the unacknowledged, was not rejected by others. So, they were either those who objected or those who remained silent. In this way, their consensus regarding the acceptance of the trustworthy is evident, since they were either those who accepted or those who kept silent, not denying nor objecting.

The **sixth** is what has been evident in the case of the Messenger of Allâh, صلى الله عليه وسلم, pursuing trustworthiness, chasteness, and genuine piety in those he dispatched on

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[65]This refers to a woman authorizing her husband to determine her dowery. See Qal'ajî, *Mu'jam Lughat al-Fuqahâ'*, p. 448.

assignments /1:159/ or for the delivery of the message. He only pursued the most pious because he charged them not to accept save the statement of the trustworthy. These are strong proofs within the domain of *ijtihâd*, which is close to being decisive. But the question is subject to *ijtihâd* and is not decisive.

Suspicions of the Opponents

There are four:

First, [they say] he, صلى الله عليه وسلم, accepted the testimony of the bedouin alone regarding the sighting of the crescent though all he knew of him was his being a Muslim.

We shall say: As for him being a bedouin, it does not disallow him from being acknowledged as trustworthy to the Prophet through revelation, experience, or attestations of his trustworthiness from those who knew his status or character. So, who grants you that he was unacknowledged to him [the Prophet]?

Second, [they say] the Companions accepted the statements of slaves, women, and bedouins because they did not know them to be *fâsiqs*, but knew them to be Muslims.

We shall say: They have accepted the statements of the wives of the Messenger of Allâh, صلى الله عليه وسلم, and the wives of his Companions, while their trustworthiness, as well as that of their clients, were well known to them. But when they did not know [the the person], they rejected [them], as in the statement of al-Ashja'î and that of Fâṭima b. Qays.

Third, they say, "Regarding an unbeliever who becomes a Muslim and then immediately testifies or transmits, if you say you

do not accept his testimony, this is inconsistent. But if you accept, there is no base for acceptance but him being a Muslim and not knowing *fisq* from him. When a period passes wherein we do not know of any *fisq* from him throughout the duration of him being a Muslim, then we do not hold the necessity of rejecting him."

We shall say: We do not concede accepting his transmission because a liar may become a Muslim and maintain his habit. For if we do not become aware of fear in his heart and a deterrent from lying, we do not accept his testimony. Piety is in the heart and based on fear [of Allâh]; but it is indicated through his actions and his comings and goings. If we concede accepting his transmission, it would be because of the occurrence of his Islam and his newness to the religion. But, there is a sizable difference between he who is starting and is fresh and he whose heart is hardened by a long intimacy [with lying].

If it is said: Since trustworthiness is reducible to an inner disposition of the soul whose basis is fear [of Allâh], this is not observable. Rather, it is inferred from evidence which does not yield certain knowledge but preponderates over conjecture [*zan*]. Then the basis of this fear is faith, which is a clear indication of fear. Therefore, we should be satisfied with it.

We shall say: It does not indicate this because observation and experience indicate that the number of *fâsiqs* among believers outnumber the trustworthy. So, how could we doubt ourselves regarding what we have known with certainty? Furthermore, is this not sufficient with regard to testimony for punitive measures

[*'uqûbât*], the testimony a first hand [witness], the status of the *muftî's* credibility, and the rest of what they have conceded to.

Fourth is their saying that the statement of a Muslim who is unacknowledged is acceptable as to whether meat is properly slaughtered, bathwater is pure, a woman for sale is an unmarried slave or in her *'idda*[66] so that intercourse is permissible according to his statement, or one's state of purity for prayer from major or minor *janâba* and *hadath*[67] were he to lead. And such is the case with the statement of one who reports on the purity or impurity of water based on his manifestation of Islam; or the statement of one who informs /1:160/ the blind of the direction of the prayer.

We shall say: As for the [unacknowledged] contractor, his statement is acceptable, not due to his being unacknowledged, but given the prevalence of *fisq*, this is a concession, since *fâsiqs* are so numerous and are urgently needed for transactions. This is [allowed] also for the permissibility of following [in prayer] the righteous and the unrighteous. So *sitr*[68] is not required.

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[66]This refers to the waiting period of a woman after the death of her husband, which is four months and ten days; or divorce, which last through three menstrual periods. See Qal'ajî, *Mu'jam Lughat al-Fuqahâ'*, p. 439.

[67]*Hadath* is ritual impurity; consult Qal'ajî, *Mu'jam Lughat al-Fuqahâ'*, p. 176.

[68]*Sitr* linguistically means *veil* or *cover* in the technical vocabulary of the *muhaddiths*. It refers to a person who is not known as being discredited. Consult Qal'ajî, *Mu'jam Lughat al-Fuqahâ'*, p. 176.

As for the reports about the direction of prayer and the purity of water, it is not necessary to accept these reports if peace of mind does not accrue—and peace of mind will not accrue with regard to the unacknowledged. In fact, peace of mind accrues regarding the statement of a *fâsiq* who is known to refrain from lying more so than by the statement of the unacknowledged. But in matters which concern a person's relationship with Allâh, تعالى, it is not uncommon for them to be reduced to one's peace of mind.

As for transmission [of *hadîth*] and testimony, their status is much higher and their importance is extensive. Therefore, they cannot be compared with other cases [simply] because they are plausible forms and are subject to *ijtihâd*. As for the rejection of *hadîths* from a *fâsiq* and the unacknowledged, this is nearly decisive.

II. DISCUSSION: Now, they have differed concerning the testimony of the *muta'awwil fâsiq* who does not recognize his own *fisq*. Al-Shâfi'î said:

> I accept the testimony of a Hanafite, although I penalize him for drinking *nabîdh*, for this is undecisive *fisq*. Rather, the decisive sort is the *fisq* of the Kharajites, who pillage the lands and kill children while not recognizing that they [themselves] are *fâsiqs*.

Al-Shâfi'î also said that the testimony of the heretics is accepted, with the exception of the Khattabiyya from among the Shi'ites because they hold the opinion of testifying falsely on behalf of their sectarian allies.

Al-Qâḏi opined that the transmission and testimony of the heretics should not be accepted, for they are *fâsiqs* by their actions and their ignorance of the prohibition of their acts. So their *fisq* is doubled. He asserts that a heretic's ignorance of his own *fisq* is like his being ignorant of his own unbelief or his own enslavement.

Dispute arises from [the question] of whether *fisq* disqualifies testimony for its non-status, as does unbelief and slavery, which negates the capacity [of credibility], or negates one's statement due to suspicion. But if it is [a matter] of suspicion and the heretic refrains from lying, he should not be suspected. In fact, al-Shâfi'î's statement refers to this. This falls, however, within the domain of *ijtihâd*.

So, Abû H̲anîfa's position is that unbelief and *fisq* cannot negate capacity, but necessitate suspicion. Therefore, he accepted the testimony of the *dhimmîs* against one another, while al-Qâdî's position is that both of them lack the status, therefore negating capacity. But, al-Shâfi'î's position is that unbelief lacks [status], while *fisq* necessitates rejection because of suspicion. This is the preponderating opinion in our view.

If it is said: Al-Shâfi'î's position is disputatious in two ways:

First, he declared that marriage cannot be contracted based on the witness of a *fâsiq* due to lack of capacity. **Second**, even if there is suspicion but one's truthfulness preponderates in the thinking of the judge, he should accept it.

We shall say: As for the first, it is based on his statement, صلى الله عليه وسلم , "There is no marriage save with a guardian and two

trustworthy witnesses." But it is only for the *Sharî'a* to add requirements to the capacity of witnessing, like the requirement concerning the guardian, or the requirement of an additional number [of witnesses] concerning fornication.

As for the second, this is caused by differing opinions, since [trustworthiness] is an inner quality that the *Sharî'a* has linked to evident means, namely, a specific number and a special character, i.e., trustworthiness. So, it is necessary to follow the evident meaning, not the inner meaning, as in the case of penalties and the case of rejecting the testimony of a father in favor of one of his children against the other; for he is suspect and his testimony is rejected because fatherhood is liable to suspicion. So, the circumstance is disregarded. But the likely cause of suspicion is the deliberate perpetration of *fisq*, versus indeliberate *fisq*.

Another proof for al-Shâfi'î's opinion is the Companions' acceptance of the Kharajites' statements concerning traditions and testimonies, though they are *fâsiqs* and *muta'awwils*. The Successors followed the Companions because the Kharajites abstained from lying and were ignorant of *fisq*.

If it is said: Could *Ijmâ'* be claimed with regard to this?

We shall say: No. For we do know that 'Alî and other *imâms* assented to the statements of the killers of 'Uthmân and the Kharajites. But we do not know this about all the Companions, for there may have been among them those who concealed their objections but did not object to the imâm since it is in the domain of *ijtihâd*. So how could this be? Even if all of them accepted their

report, it would not established that all believed they were *fâsiq*? How can this be imagined, while the Kharajites are included as part of the people of *ijmâ'* and they did not believe that they were *fâsiqs* themselves; rather, they regarded their opponents to be so, believing in the *fisq* of 'Uthmân and Talha? In fact, 'Ammâr b. Yâsir, 'Adiy b. Hâtim, b. al-Kawwâ', and al-Ashtar al-Nakh'î, along with a group of dignitaries, agreed with them [the Kharajites], while 'Alî concealed his objection against them for fear of civil war.

If it is said: Even though they did not believe in the *fisq* of the Kharajites, they are *fâsiqs*.

We shall say: This is not true because ignorance of what constitutes unbelief and *fisq* is not in itself unbelief and *fisq*. In general, the acceptance of their [the Kharijites'] reports indicates that they [the Companions] have believed in rejecting the tradition of a *fâsiq* for suspicion, but they did not suspect the *muta'awwil*. Allâh knows best.

A Concise Conclusion about Transmission and Testimony

Know that responsibility, Islamicity, trustworthiness, and accuracy are common in transmission and testimony. As for freedom, maleness, sight, kinship, fixed number, and animosity, these six affect testimony, not transmission, for transmission has a general rule which is particular to a person so that he is not effected by friendship, kinship, and animosity. The children of the Messenger of Allâh, صلى الله عليه وسلم, reported from him—and every child reports from its father.

As for the blind person who accurately records utterances, his transmission is accepted even though his testimony is not, since the Companions transmitted from 'A'isha relying only on her voice. Thus, with her, they were like the blind.

Nor is it required for a reporter to be a scholar or a *faqîh*, whether or not his reporting confirms or contradicts *qiyâs*, since a carrier of *fiqh* may not be a *faqîh*, but he may convey it to one possessing a greater knowledge of *fiqh*. Therefore, only memorization is required. Furthermore, attending scholarly sessions for hearing *hadîth* is not required, for the Companions have accepted a report from a bedouin who only reported one *hadîth*. Indeed, if it is contradicted by the *hadîth* of a specialist scholar, then one preponderates over the other. A discussion will follow regarding this.

The transmission of a person who is known for his trifleness or looseness /1:162/ regarding the affairs of *hadîth*, or excessive heedlessness, should not be accepted; for all of this nullifies trust. As for trifleness or looseness regarding his own statements, this does not necessitate rejection.

It is not required for the reporter's genealogy to be known. Rather, if the trustworthiness of a person is known through experience, then his transmission should be accepted even though he does not keep his genealogy, let alone not know it. If a transmission comes from a totally unknown person, we do not accept it. Rather, those who accept the transmission of a person whose character is unknown do not accept it from one whose identity is not known; for if one knows his identity he may know

him for his *fisq*, contrary to the one whose identity is known though his *fisq* is not. But if a report comes from a person whose name is mentioned inconsistently as trustworthy or untrustworthy, his report is not accepted because of this inconsistency.

Chapter Three: Discrediting and Attesting
There are four Subdivisons

First: The Number of Attestors

They have differed in this regard. Some *muhaddiths* have required a fixed number concerning attestors and discreditors, just as in attesting witnesses. Al-Qâdî said that there is no fixed number regarding the attestation of a witness or reporter, even though it is circumspect to seek corroboration in the number of attestors with regard to testimony. Others have stated that it is required for testimony but not for transmission. This, however, is a *fiqhî* discussion. In our view, it is more evident to require it with regard to testimony and not transmission because the number establishing transmission is no more than the transmitters themselves.

If it is said: Accepting the report of an individual has been authenticated by the Companions while accepting the attestation of an individual is not so. It must be referred to the *qiyâs* of *Shari'a*.

We shall say: We know much of what they *did not* do from what they *have* done. In our view, for example, upon accepting the *hadîth* of Abû Bakr, رضي الله عنه, they used to accept his attestations of those reporting the *hadîth*. So how could it be that a condition of a

thing be greater than its principle? Matrimony is established by the statement of two, although fornication is not established with less than four—and *qiyâs* is not applicable here. We hold that, similar to the acceptance of a transmission from a slave or a woman, their attestation is also accepted. These are *fiqhî* matters that have been established by *qiyâs*, and there is no sense in dwelling upon them in the science of the principles.

Second: Qualifying Attestation and Discrediting

Al-Shâfi'î said that one must qualify a discrediting [statement] but not an attestation. For [a transmitter] may be discredited with with what he does not consider to be discrediting because of the diverse opinions about it. As for trustworthiness, it has only one quality.

Others have said that unqualified discrediting nullifies trust and that unqualified attestation does not yield trust because people hasten to rely on superficialities. Therefore, stating its qualification is necessary. Still others have said that qualification is necessary for both, thus integrating the statements of both sides.

Al-Qâḏî holds that it is not necessary to qualify either of them, for if the attestor is not acquainted with this matter, then he is not eligible for attestation; and if he is acquainted, there is no sense in questioning him.

In our view, the correct opinion is that this varies depending on the condition of the attestor. When trust accrues regarding his insight and accuracy, his unqualified statement is sufficient. But regarding a person whose trustworthiness is known while his

acquaintance with the conditions of trustworthiness is not known, we may reexamine him, i.e. seek details if we do not find one who knows him. But if attestation and discrediting are in contradiction, we give preference to discrediting because the discreditor pursued additional information that the attestor was neither aware of nor refuted. Even if he refutes it, the trustworthiness of the attestor is nullified, in view of the fact that refutation is not ascertainable, unless the discreditor, say, accuses him of killing a person but the attestor says, "I have seen him alive afterward." Therefore, they would be in [open] contradiction.

It is said that if the number of attestors is greater than the discreditors, then attesting is given preference over the discrediting. But this is weak, for the preponderance of discrediting is because the discreditor is aware of additional information. This cannot be negated by additional numbers.

Third: Attestation

[Attestation] occurs by statement, transmission from a person, acting in accordance with one's report, or ruling based on one's testimony. The highest among these four is the explicit statement, as in saying, "He is trustworthy and agreeable because I have known about him." But if one does not qualify it while he is acquainted with the conditions of trustworthiness, it is sufficient.

The **second** is when one transmits a report from him [the witness]. But they have differed as to whether this is attestation. The truth is that if it is known from his practice or his explicit statement that he does not accept transmission except from those

worthy of trust, then his report is attestation. Otherwise it is not. For the practice of a large number is to report from all whom they hear. But when they are asked to commend them, they keep silent. So there is nothing in his transmission specifying attestation.

If it is said: If one knows of *fisq* from him but still transmits from him, he will then be deceiving in religion.

We shall say: He did not oblige others to act, but simply said, "I hear so and so saying such and such." Therefore, he is telling the truth. Moreover, he may not have known of his *fisq*, nor his trustworthiness. Thus, he transmitted it, leaving investigation to whoever is willing to accept it.

The **third** is acting on the basis of transmission when at all possible to interpret it as being circumspect to act, or acting on the basis of another proof that agrees with it. But this is not attestation unless we know certainly that he has acted based on a tradition; then it is; for if the attestor acts in accordance with the transmission of an untrustworthy person, he then becomes a *fâsiq*, and his trustworthiness is nullified.

If it is said: He may have simply thought that Islam and the absence of *fisq* qualifies as trustworthiness.

We shall say: This applies to attestation by statement. We said that action is similar to statment, but this possibility is removed by qualifying trustworthiness. What we have mentioned stems from the sufficiency of unqualified attestation, for if it is required here to qualify [trustworthiness], it must be required,

with regard to the testimony of sales and marriage, to survey all the validating conditions, which is unlikely.

If it is said: He may know him to be trustworthy while others know him to be a *fâsiq*.

We shall say: Certainly whoever knows him [as a *fâsiq*] is not obliged to act according to [his report], as in the case of regarding the discredited, trustworthy person.

The **fourth** is that ruling is based on his testimony. This is stronger than attesting to him by statement.[69] As for the abandonment of ruling based on his testimony or his report, this is not discrediting because one may hesitate with regard to the testimony and transmission of the trustworthy for reasons other than discrediting. /1:164/ Why should this not be so! while abandoning action is no more than unqualified discrediting, which is not accepted by the majority. In sum, if no reason emerges to attest to an action by way of giving preference or another proof, it is like unqualified discrediting.

Fourth: The trustworthiness of the Companions, رضي الله عنهم

What has been held by the early generations of the *ummah*

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[69] Ghazâlî appears to be contradicting himself for he has stated in the beginning of Attestation that its highest form is an explicit statement, unless he means that the explicit statement is included in a judge's ruling based on the reporter's testimony. This, then, would be a higher form, for it combines both explicit endorsement and acting according to it. However, the wording could have been clearer.

and the majority of their successors is that their trustworthiness is known by Allâh's, attestation and praise of them in His Book, عز و جل. Therefore, this is our belief in them unless it is decisively established that one of them knowingly has committed *fisq*—but this has never been established. So, they are not in need of attestation. Allâh, تعالى , said:

> "*You are the best of peoples come for mankind. . . .*"[70]

> "*Thus We have made of you a people justly balanced that you might be witnesses over mankind . . . .*"[71]

This is an address to those present in that time. Also, the Exalted said:

> "*Allâh, indeed, was well pleased with the believers when they swore allegiance to you under the tree . . . .*"[72]

> "*And the foremost, the first of the emigrants and the helpers and those who followed them in goodness—Allâh is well pleased with them. . . .*"[73]

Indeed Allâh, تعالى, has mentioned the emigrants and the helpers in various places, praising them.

Moreover, [the Prophet], صلى الله عليه وسلم , has said:

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[70]Qur'ân, 3:110

[71]Qur'ân, 2:143.

[72]Qur'ân, 48:18.

[73]Qur'ân, 9:100.

> "The best of people are my generation; then those succeeding them. . . . ."[74]

> "If one of you were to spend enough gold to fill the Earth you would not reach the full stature of a Companion, not even half."[75]

> "Allâh, indeed, has chosen for me Companions, in-laws, and helpers."[76]

So which attestation is more sound than the attestation of the Knower of all that is unseen and His Messenger, صلى الله عليه وسلم ?

Why should it not be so! while even if their praise was not received, still what has been broadly reported of their conditions—with regard to emigration, *jihâd*, sacrifice of life and wealth, including the loss of parents and relatives for devotion to and support of the Messenger of Allâh, صلى الله عليه وسلم—is decisively sufficient for their attestation.

Some people have claimed that their situation is similar to all others with regard to the necessity of investigation. Others have said that they were worthy of trust from the beginning of Islam until the advent of [civil] war, disputes, changing conditions, and shedding of blood; thereupon investigation became necessary.

The majority of the Mu'tazilites have stated that 'A'isha,

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[74] See Wensinck, *Concordance et Indices de la Tradition Musulmane*, 5:372.

[75] See Wensinck, *Concordance et Indices de la Tradition Musulmane*, 6:515-516.

[76] Ibn Hajar, *Tahdhîb al-Tahdhîb*, 5:227.

Talha, Zubayr, and the people of Iraq and Syria are *fâsiqs* for fighting the legitimate *imâm*. A group of earlier Mu'tazilites have stated that it is necessary to refute the testimony of 'Alî, Talha, and Zubayr whether they are together or separated from one another because among them their is a *fâsiq* whose person is not known. But, some have said that the testimony of each one of them individually is acceptable because his *fisq* is not identified. But when he is with his adversary, both of their testimonies are to be rejected, since we are certain that one of them must be a *fâsiq*. Some even suspect the *fisq* of 'Uthmân and [doubt] that of his assassins.

Yet all of this is insolence against the early generation and the Companions, contrary to the way of the *Sunna*.

Some people have even said that what has happened between them was based on *ijtihâd*, and that every *mujtahid* is correct, or that one is correct while the mistaken one is excused, thus his testimony cannot be rejected.

Others have said that this does not fall within the domain of *ijtihâd*; and certainly the assassins of 'Uthman and the Kharajites are decisively wrong, but they are not aware of their error. /1:165/ Therefore, they are *muta'awwils* and the transmission of a *fâsiq muta'awwil* cannot be rejected.

This [position] is more understandable than arriving at a position refuting the unqualified attestation of the Qur'ân.

If it is said: The Qur'ân praised the Companions. But who is a Companion, he who was a contemporary of the Messenger of Allâh,

صلى الله عليه وسلم? one who met with him once or accompanied him for an hour? or one who had an extended companionship? And, [if yes], specifically for how long?

We shall say: The term applies only to those who accompanied him. Literally speaking, it is sufficient to apply *companionship* if it was [only] for an hour. But ordinarily, the term is used specifically for he whose companionship was lengthy. This is ascertainable through *tawâtur*, an authentic transmission, or the explicit statement of a Companion, "My companionship was lengthy." But determining the length can only be approximated and not exactly measured.

Chapter Four: The Tansmitter's Base and the Quality of his Reporting

[The transmitter's] base of reliance is [1] the *shaykh's* reading to him, [2] his reading to the *shaykh*, [3] the *shaykh's* authorization, [4] the shaykh's passing of the book by hand to him, or [5] the reporter seeing the *shaykh's* hand writing in a book. These, then, are the five ranks.[77]

The first, which is the highest, is the *shaykh* reading the book to him in the context of reporting in order for it to be transmitted from him. This empowers the reporter to say, "So and so informed me," or "he said to me, " or "I heard him say."

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[77]For an elaborate discusion on this, see Ibn al-Salâh, *Muqadima*, ed. 'A'isha Abd al-Rahmân (Cairo: Dar al-Kutb Press, 1974), p. 245-95.

The second is the reporter reading before the *shaykh*, who keeps silent as if saying, "This is correct." On this basis, transmission is permitted—contrary to [the opinion of] some Ẕâhirites. For if this is not considered correct, then the [*shaykh's*] silence and approval would be considered *fisq*, injuring his trustworthiness. Furthermore, if we hold this to be permissible, we would then have to hold that it is possible that he is lying when he states that it is correct. Indeed, if there were the slightest suggestion of carelessness or heedlessness, then silence would not suffice.

This empowers the transmitter to say only, "So and so reported to us and informed us by our reading to him." But they have differed with regard to his unqualified statement, "So and so has reported to us" or "I heard so and so."

The correct position is that this is not permissible because it implies verbal transmission, for the terms '*khabar*,' '*ẖadîth*,' and '*masmû*''[78] all give the impression of verbalization. This would be lying on his part unless it is known by his explicit statement or his circumstances that he means by it reading to the *shaykh*, not actually hearing his *ẖadîth*.

The **third** is authorization, as in saying, "I authorize you to transmit from me a certain book . . ."; or, "I authorize you to transmit what you authenticate from among my reports." At this

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[78]Often these terms are used interchangably with some stipulations. By '*khabar* 'and '*ẖadîth*,' they mean *reporting;* and *masmu'* means that which has been heard.

point circumspection becomes necessary in identifying the report specifically heard. But if he is restricted to saying, "This is what I heard from so and so," then transmission is not permissible from him because he did not permit transmission. He may not allow transmission because of his awareness of a defect in it, even though he has heard it.

Similarly, if one says, "I have a testimony," he cannot testify unless he is told, "I permit you to testify based on my testimony." Otherwise, this testimony is not recognized before the judge, since transmission is a testimony and a person may be speaking loosely. But when seeking decisive testimony he may hesitate as well.

Furthermore, authorization empowers the reporter to say, "He has reported or told us by way of authorization." As for his unqualified statement, "He has reported to us," some hold this to be permissible. But this is corrupt because it implies hearing his statement, which is not true, as we have mentioned in [the phrase] *reading to the shaykh.*

The **fourth** is passing the book by hand. Its form comprises the *shaykh's* saying, "Take this book and transmit it on my authority because I have heard it from so and so." /1:166/ Simply passing the book by hand without this statement is meaningless. But even when these words are present, passing the book is useless because this is an unwarranted formality which some *muḫaddiths* have invented. But it is useless. Just as the transmission of a *ḫadîth* is permissible by authorization, so it is necessary to act based on it—in contradistinction to [the opinion of] some of the Ẕahirites. Thus, the purpose is to know the rectitude of the report,

not to identify the channel which makes it known. His statement, "I heard this book; therefore, you may transmit it on my behalf," as far as identification, is similar to his own reading of it or his being read to.

As for their statement that he is capable of reporting it to him, so let it be—what is the need for it? It necessarily follows that reading to him becomes invalid because he is himself capable of reading. Furthermore, he must not report during the life of the *shaykh* because he is capable of referring to the original source, as in the case of testimony. Therefore, this indicates that this [form] is not valid in transmission.

The fifth is reliance on handwriting, that is, on seeing a script in his handwriting and stating, "I have heard such and such from so and so." It is not, however, permissible to transmit on his [the *shaykh's*] authority because transmission is the same as testifying that the shaykh has said this. But the handwriting by itself cannot identify him in this fashion.

Indeed, it is possible for him to say, "I have seen it handwritten in a book and I thought it was the handwriting of so and so." For one's handwriting may be confused with another's. But if he says, "This is my handwriting," then his statement would be accepted. Yet he [the transmitter] should not transmit on the *shaykh's* authority as long as the *shaykh* did not authorize him to transmit, either by his explicit statement or through the circumstantial evidence of him being poised to transmit *ḥadîth*.

Now if a trustworthy person says, for example, that this is an accurate copy of Bukhârî's book and he sees in it a *ḥadîth*, then he

is not permitted to transmit it.

As for being obligated to act accordingly, it is incumbent for a *muqallid* [a follower] to ask a *mujtahid*. But some have held that it is not permissible for a *mujtahid* to act on its basis if he did not hear it. Others have stated that if the *mujtahid* knows it to be correct on the basis of a trustworthy person's statement, then acting according to it is permitted. For the Companions of the Messenger of Allâh carried the documents of *zakât* to various territories, and people honored these documents on the testimony of the bearer that they were true documents, though all did not hear it from him [the Prophet]. For this imparts peace of mind and the likelihood of their being true.

In sum, one ought not transmit except what he knows, that is, what he has first heard and preserved and then recorded, until the time of transmission, so that he knows that what he has transmitted is exactly what he has heard, nor has a [single] letter been changed. For if he doubts anything of it, he must abandon transmission. From this principle stems several discussions.

I. DISCUSSION: If from among what he has heard from al-Zuhrî[79] there is a *hadîth*, for example, in which he doubts whether he has heard it from al-Zuhrî or not, then he is not permitted to say "I heard al-Zuhrî" nor say "Al-Zuhrî said" because his statement

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[79]Muhammad b. Muslim b. 'Abd Allâh b. Shihâb al-Zuhrî (d. 124/742). See Ziriklî, *al-'Alâm*, 7:97; and Ibn Hajar, *Tahdhîb al-Tahdhîb*, 9:395.

"Al-Zuhrî said" is like a testimony on behalf of al-Zuhrî, which is not permitted except by knowing because he may have heard it from other than him. Thus, he is like one who heard a statement not knowing whether Zayd or 'Amr stated it. So, he is not permitted to testify on behalf of Zayd. Further, we say if he has heard a hundred *hadîth* from one source, and among them there is one he knows he did not hear, but is confused as to which one it is, he should not transmit it. Furthermore, he should not transmit any of them on behalf [of the source], since it is possible for any of the /1:167/ *hadîths* to be the one he did not hear. Even if he presumes that he most likely heard a particular *hadîth* from al-Zuhrî, still it is not permissible for him to transmit it on the basis of the presumption of its likelihood.

Others have said that it is permissible because reliance, in this case, is based on his presumption of its likelihood. This is far-fetched because a judge's reliance on the likelihood of his presumption regarding a testimony is because he does not know the truthfulness of the witness. As for the witness himself, he must be sure because it is conceivable to charge him with the obligation to testify only on what is certainly known and what may be witnessed. However, obligating a judge not to rule except on the basis of the eyewitness's truthfulness is absurd. Similarly, it is not possible for a transmitter to know the exactly the truthfulness of the source. But, he has a way of identifying his statement by hearing. But if this is not realized then he must not transmit.

If it is said: It is permissible for one in our age to say that the Messenger of Allâh, صلى الله عليه وسلم, said this but does not know its

truth with certainty.

We shall say: There is no way for him to verify this. Moreover, when he says that the Messenger of Allâh, صلى الله عليه وسلم, said this, it does not convey that he has heard it. Rather, it is understood from his statement that he heard this *hadîth* from someone else or from what someone has transmitted in a book that he relied on. But it is not incumbent for everyone who hears this to act accordingly because this is a *mursal*[80] [unconnected] *hadîth*. It is not known from what source he is repeating it. Rather, acting becomes necessary only when the source is identified so that his condition and trustworthiness can be examined—and Allâh knows.

II. DISCUSSION: If the *shaykh* rejects the *hadîth*—and his rejection is similar to a denier decisively holding the transmitter to be lying—and does not act on its basis, then the transmitter does not become impugned because impugnment may not be established by the statement of one person. For he is accusing his *shaykh* of lying, just as the *shaykh* is accusing him of lying, while both are trustworthy. It is like two clear proofs which are mutually contradictory. Therefore, this does not necessitate impugnment.

But if he rejects it with hesitation, saying, "I do not remember it," then it is permissible to act in accordance with the report, since the transmitter was certain that he heard it from him, and the

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[80]This refers to a *hadîth* based on a chain of transmiters that is not traced further back than the generation of the Successors, failing to identify the source among the Companions who related it from the Prophet.

latter is not decisively accusing him of lying, and both are trustworthy. Therefore, the truthfulness of both is possible.

Al-Karkhî is of the opinion that the *shaykh's* forgetfulness of the *hadîth* nullifies it. And upon this he built the rejection of the report of al-Zuhrî—"*Any woman who marries without the permission of her guardian . . . ,*"[81]—arguing that the *shaykh* is the source, and it is not for him to act according to the *hadîth*, since the transmitter is his subordinate. So how can he act on its basis?

We shall say that the *shaykh* may act in accordance to it if a trustworthy [transmitter] reports to him what he heard from him. But if some doubt lingers in him in spite of the trustworthy person's transmission, then he should not act according to it. But as for the transmitter, he should act in accordance with it if he is certain that he has heard him. As for all others, they should act based on it to maintain the attestment of both.

Furthermore, it is incumbent upon the judge to rule in accordance with the statement of a lying witness who is overtly trustworthy. But this is forbidden for the witness.

For the common Muslim, it is incumbent to act according to the *fatwâ* of the *mujtahid* —even if his *ijtihâd* has changed, as long as he is unaware that his *ijtihâd* has changed. But the *mujtahid* cannot act according to his previous opinion if it has changed, for he knows it. Therefore, the action of each one is based on his situation.

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[81]The rest of the *hadîth*, according to al-Tirmidhî, 2:398-401 is, ". . . her marriage is void."

Mâlik, al-Shâfi'î, and the majority of the theologians have held this view because forgetfulness is common to humans—and what *muhaddîth* can recall in a moment all that he has received during his lifetime? Therefore, it is similar to the *shaykh's* doubt of an addition to a *hadîth*, /1:168/ or the inflectional variances in a *hadîth*, since this does not void it as result of the frequency of doubt occurring in it. And so it is with refernce to the text of a *hadîth*.

III. **DISCUSSION**: A trustworthy reporter individually reporting an addition to a *hadîth* to the exclusion of the group of transmitters is acceptable to the majority, whether or not the addition is in words or in meaning. For if he exclusively transmits a *hadîth* not reported by the other transmitters, it would still be acceptable. This is similar to his individual reporting of an addition, for a trustworthy reporter is not held suspect on the basis of possibilites.

If it is said: It is unlikely that he alone recorded this addition while all the rest listened attentively.

We shall say: It is better for others to corroborate if possible. But he is decisive about hearing it and others did not decisively negate it. Thus, it may have been that the Messenger, صلى الله عليه وسلم, mentioned it in two sittings. So, when he mentioned the addition, perhaps only one [of the reporters] was present. Or he may have repeated it in only one sitting and mentioned the addition only at one time with only one [reporter] present.

It is also possible that whoever reported the incomplete text joined the sitting later and did not hear it completely. Or they may have joined in attendance and all but one forgot the addition. Or a surprising distraction may have occurred while the *ḫadîth* was being given and the attention of some was distracted. Thus, only he who was attentive recorded the addition. Or occupying thoughts may have occurred in some, preventing them from recording the addition. Or a temporary disturbance may have compelled some to leave before completion. So if all this is possible, the trustworthy should not be impugned, as far as possible.

IV. DISCUSSION: The transmission of part of a report is not permitted according to most of those who have forbidden the transmission of *ḫadîth* through their meaning.[82] But those who permit transmission on the basis of meanings hold this to be permissible if the transmitter had transmitted it once in its entirety and that the mentioned part is not dependent on what has been omitted in a way that alters its meaning. But if it is dependent—like a condition of a particular worship or its essentials, or what completes it—then to transmit only a part of it is distortion and deception. But if he has transmitted a *ḫadîth* once in its entirety and another time incompletely in a way that does not alter it, then it is permissible, but on the condition that suspicion and

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[82]Ghazâlî refers here to one side of a sublte dispute among muḫaddiths regarding the transmission of a *ḫadîth* by relating its general meaning as opposed to its verbatim transmission.

accusation does not reach the transmitter. Yet if he knows that he may be accused of confusing transmission, then it is incumbent upon him to be cautious.

V. DISCUSSION: Transmitting a *hadîth* by its meaning, versus verbatim, is prohibited for one who is ignorant of the [various] contexts of addresses and of the subtleties of words.

As for one who knows the difference between the likely and the unlikely, the overt and the more overt, and the common and the most common, al-Shâfi'î, Mâlik, Abû Hanîfa, and the majority of the *fuqahâ'* have permitted him to transmit it by its meaning if he has understood it. But another group has said that it is only permissible for him to substitute a word with its synonym or what equals it in meaning, like substituting *sitting* for *sitting down* or *cognizance* for *knowledge* or *ability* for *capability* or *viewing* for *seeing* or *prohibited* for *forbidden*, or others whose meanings cannot be confused. In sum, it is all that cannot be exposed to differences in inference and understanding. However, this is only in regard to what is decisively understood, not what is understood through reasoning, which is disputed by researchers.

Proof for the permissibility of this for a scholar is the consensus on the permissibility of explaining the *Sharî'a* to non-Arabs in their own tongue. Therefore, if it is permissible /1:169/ to substitute Arabic with corresponding non-Arabic [words], then Arabic into corresponding or equivalent Arabic is a priori permissible. This has been the way of the envoys of the Messenger of Allâh, صلى الله عليه وسلم, in various lands, conveying his commands in

their own tongue.

Similarly, he who hears the testimony of the Messenger of Allâh, صلى الله عليه وسلم, may testify on the testimony in another language. And this is because we know that there is no divine obligation with regard to words. Rather, the purpose is to understand the meaning and convey it to people. But this does not apply to *tashahhud* [83] or *takbîr* [84] and religious duties requiring specific words.[85]

If it is said: He said, peace be upon him:

> May Allâh make prosperous he who heard my speech, retained it, and then delivered it as he has heard it; for a receiver may be more aware than the one who heard it; and there may be bearer of *fiqh* who is not a *faqîh;* and it may be that a bearer of *fiqh* may convey to one who is more of a *faqîh.*

We shall say: This is the proof because he mentioned the *ratio legis* as being the difference in understanding among people. Therefore, nothing prevents [the occurrence of] what people do not differ about, like synonymous words. Furthermore, this *hadîth* itself has been transmitted in different words, though the meaning

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[83]The term refers to the Muslim declaration that God is one and Muhammad is His Messenger.

[84]This refers to the phrase *Allâhu Akbar* meaning God is great

[85]Al-Subkî, *al-Ibhâj fî Sharh al-Minhâj*, 2:345, in his discussion of *mursal* tradition almost repeats Ghazâlî's words here verbatim.

is one, although it is possible that all the words may be from the utterances of the Messenger of Allâh, صلى الله عليه وسلم, at different times. But most likely it was one *h̲adîth* transmitted in different words; for it has also been reported as:

> "May Allâh have mercy on one who. . . ."
> "May Allâh make prosperous he who. . . . "

And it has been reported: "

> "A bearer of *fiqh* may have no *fiqh* himself. . . ."
> "A bearer of *fiqh* may not be a *faqîh*. . . ."

And so it is with single addresses and single events which have been reported by the Companions, رضي الله عنهم, in different words. This, then, indicates permissibility.

VI. DISCUSSION: The *mursal* [*h̲adîth*] is acceptable, according to Mâlik, Abû Hanifah, and the majority [of legists], but is rejected by al-Shâfi'î and al-Qâd̲î,[86] which is the preferable opinion. Its form is such that he who was not a contemporary of the Messenger of Allâh, صلى الله عليه وسلم, states, "The Messenger of Allâh, صلى الله عليه وسلم, said . . . "; or one who was not a contemporary of Abû Hurayra states, "Abû Hurayra said . . . " The proof for this is that if a [transmitter] mentions his *shaykh* without attesting to his

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[86]Ghazâlî attributes a different opinion to al-Qâd̲î regarding *mursal hadîth* in his earlier work, *al-Mankhûl*, p. 275. Al-Subkî, *al-Ibhâj fî Sharh̲ al-Minhâj*, 2:339, cites al-Qâd̲î as saying, "We in general do not accept *mursal* traditions, even in the places where al-Shâfi'î accepted them to solve controversies. . . ."

trustworthiness, and he remains unacknowledged to us, we would not accept. Moreover, if he does not identify his [*shaykh's*] name, then ignorance is even greater; for how can the trustworthiness of one whose person is not known be known?

If it is said: The trustworthy person's transmission from him is an attestation [to his trustworthiness].

The answer to this has two bases:

First, we do not submit to this because a trustworthy person may report from someone such that if asked about him, he would either hesitate about him or discredit him. We have seen [traditionists] reporting from those who, when questioned about them, at times attest to their trustworthiness and at other times discredit them or state, "We do not know." Therefore, a reporter transmitting from such a person is actually silent with regard to his trustworthiness. For if abstention from discrediting is taken as attesting to trustworthiness, then silence about trustworthiness should likewise be taken as discrediting. It necessarily follows that if a transmitter discredits his source, he is, in fact, rendering himself a liar.

Moreover, the testimony of an indirect witness does not attest to the source, so long as he does not explicitly state it. The distinction between transmission and testimony, regarding certain divine obligations, does not necessarily change in this respect, just as it did not necessitate a change in the prohibition against the acceptance of reports from the discredited or the unacknowledged. Thus, if it is not permissible to say that a trustworthy person may only testify on the basis of a trustworthy person's testimony, then

it is not permissible with respect to transmission. Therefore, it is necessary to specify the identity of the *shaykh* and the source so that their conditions can be investigated.

If it is said: *'An'ana*[87] transmission is sufficient in reporting, although when it is said that someone /1:170/ has transmitted from someone, and he in turn from someone else, this may imply that he himself has not heard it; rather, it has reached him through an unspecified intermediary. But with this possibility, it is still acceptable. However, in the case of testimony it is not acceptable.

We shall say: This is so provided that it does not necessarily alter the status of the transmission of the unacknowledged. But *mursal ḫadîth* are transmitted from unacknowledged persons. So, it must not be accepted.

An'anah transmissions, however, became the practice among the scribes [of *ḫadîth*] because they found it burdensome to write with every name that he transmitted the report from so and so by actually hearing it from him, and thus withheld from wasting paper

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[87]This term is derived from the Arabic "*an* ' and is used among traditionists to mean *from* or *on the authority of*, but not necessarily indicating actual hearing of a report. The dispute regarding the reliability of such reports became visible by the 3d century. Muslim b. al-Ḫajjâj defended *'an'anah* transmissions in the introduction of his collection of *ḫadîth*, known as *Saḫîḫ Muslim*, 18 vols. 2nd ed. (Beirut: Dar Ihyâ' al-Turâth al-'Arabî, 1972), 1:127-44. Later sources accepted this form of reporting provided that it was transmitted by those whom they considered to be trustworthy and not deceitful. Also, when it is established, the reporter actually meets with his source. Consult al-Baghdadî, *al-Kifâya*, p. 389 and Ṣâliḫ, *Uṣûl al-Ḫadîth*, p. 250.

and time; so they used abbreviations. This is only accepted in transmission if by his explicit statement or through his practice it is known that he means actually hearing. But if he does not mean actual hearing, then it is not be accepted because it wavers between *musnad* and *mursal*.

The **second** answer is that even if for the sake of argument sake we concede that transmission *is* attestation, still, unqualified attestation is not acceptable so long as one does not state the reason. Furthermore, if he explicitly states that he heard this report from a trustworthy, credible source, its acceptance is not necessary.

Also, if we concede to the acceptance of unqualified attestations, it would only be in regard to a person whose identity is known and who is not known for any *fisq*. As for he whose identity we do not know, perhaps if he were to be identified we would know of his *fisq*, which the attestor may have been unaware of. It is sufficient for every locus of obligation to accept the characterization of others when he is incapable of knowing himself. But his incapability cannot be known unless he identifies him specifically. It is for such reasons that the unqualified attestation of an indirect witness is not accepted so long as he does not identify and specify the source. For if he does, the judge may know of his *fisq*, prejudices, or other things.

Now, they argue [their position] on the basis of the Companions' and the Successors' agreement to accept *mursal ḥadîth* from a trustworthy person. For example, it is said that 'Abd Allâh b. 'Abbâs, with all his numerous transmissions, did not hear the

Messenger of Allâh, صلى الله عليه وسلم,—excepting in four *hadîths*—because of his young age. He openly stated this in reported the *hadîth* about usury in a loan,[88] saying, "Usâma b. Zayd has reported it to me." Also, he reported that the Messenger of Allâh, صلى الله عليه وسلم, repeated *talbiya* [89] until he threw stones at 'Aqaba.[90] When questioned, he said, "My brother al-Fadl b. 'Abass has told me about it."

Similarly, Ibn 'Umar reported from the Messenger of Allâh, صلى الله عليه وسلم, that he said, "A person who participates in a funeral prayer has measurable reward. . . ."[91] He then related that this was on the authority of Abû Hurayra.

Also, Abû Hurayra reported, "Whosoever wakes up in *Ramadân* in the state of *janâba*, should not fast." But then he said, "I, by the Lord of the Ka'ba, did not say it; But, Muhammad, صلى الله عليه وسلم, said it." But when questioned he said, "Fadl b. 'Abbâs reported it to me."

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[88]Consult Wensinck, *Concordance et Indices de la Tradition Musulmane*, 2:217.

[89]The literal meaning is to follow, obey, or respond. The term refers to the chant that Pilgrims make during *hajj*, "*Labayk Allâhuma labayk* . . . ," meaning, "Here I am Lord, answering Your call."

[90]This is one of *hajj's* symbolic rituals where Pilgrims throw stones in three places, known as *jamarât*, east of Mecca, near Mina. See al-Zahîlî, *al-Fiqh al-Islâmî wa Adillatuhu*, 3:192-206.

[91]For the sources of this *hadîth*, consult Wensinck, et al., *Concordance et Indices de la Tradition Musulmane*, 1:386-87.

Again, al-Barâ' b. 'Azib said:

> Not all that we have transmitted to you we have heard from the Messenger of Allâh, صلى الله عليه وسلم; but we have heard some of it [from him], while some has been transmitted to us by his Companions.

As for the Successors, Ibrâhîm al-Nakhi'î said:

> If I say, 'So and so has related from 'Abd Allâh [b. Mas'ûd],' then it is indeed he who has told me. But if I say that 'Abd Allâh said . . . ,' then I have heard it from more than one person.

Similarly, the acceptance of *mursal h̲adîth* has been transmitted from a group of Successors. The answer has two sides:

The first is that this is correct; and lends proof to the acceptance of *mursal h̲adîth* by some. But this discussion is in the domain *ijtihâd;* and the *ijmâ'* with regard to this is not established at all. For there is even evidence that not all [the Companions] accepted *mursal h̲adîth.* For this reason they questioned /1:171/ b. 'Abbâs, b. 'Umar, and Abû Hurayra—in spite of their prominent status—not out of doubt for their trustworthiness, but to disclose the transmitter.

If it is said: Some of them accepted [*mursal h̲adîth*] and others remained silent, and thus constituted *ijmâ'*.

We shall say: We do not submit to the establishment of *ijmâ'* based on their silence, particularly when it is in the domain of *ijtihâd.* Rather, it may be that a person remains silent while he harbors disapproval or is hesitant about it.

The **second** answer is that among those rejecting *mursal h̲adîth* are those who have accepted the *mursal* of the Companions because they report from other Companions, and all are trustworthy. Some added the *mursal* of the Successors to that of the Companions, for they transmit from the Companions. Some specifically accept only the *mursal h̲adîth* of the senior Successors.

The preferred opinion, based on the analogy of rejecting *mursal* [*h̲adîth*], is that when a Successor or a Companion is known for his clear report or for his practice of transmitting only from a Companion, then his *mursal h̲adîth* is acceptable. But if this is not known, then it is not acceptable because they may transmit from other than a Companion, like the Arabs who had no Companionship. Yet only the trustworthiness of the Companions has been established for us.

Al-Zuhrî, after narrating a *mursal h̲adîth*, said, "A man at the door of 'Abd al-Mâlik told me this." 'Urwah b. Zubayr, with regard to his *mursal* reports narrated through Busra, said, "One of the guards told me."[92]

VII. DISCUSSION: A solitary report [instructive] about common necessities [i.e. every day needs or occurrences] is acceptable—contrary to what al-Karkhî holds and some of the

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[92]Ghazâlî here adapts a different opinion than what he has expressed in *al-Mankhûl*, p. 275, where he, oddly enough, accepted the *mursal h̲adîth* from anyone at all times.

Hanafites.[93] For it is necessary to believe all that a trustworthy person transmits, so long as his truthfulness about it is possible. For example, the *hadîth* concerning the touching of the genitals has been narrated by a trustworthy person whose truthfulness is possible; therefore, we do not decisively accuse its transmitter of lying, as opposed to a situation where a reporter solitarily transmits a report which is by the nature of the case impossible for it not to be well known, as with the murder of a governor in the marketplace, the dismissal of a minister, the occurrence of a mishap in a Mosque preventing people from Friday prayer, an earthquake, the the sinking of the earth, the falling of a big star, or other wonders. For there is abundant impetus to promulgate all of these, and their concealment is impossible.

Similarly, no solitary report can be accepted in reference to the Qur'ân; for we know that the Prophet was charged to promulgate it and bring it to the attention of all the people. Therefore, the impetus to promulgate and transmit it is overwhelming because it is the foundation of religion. Thus, a single, individual reporter transmitting a *sûra* or a verse is decisively a liar.

But with reference to common necessities, we cannot conclusively charge one who reports on such things to be a liar.

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[93] Ghazâlî, *al-Mankhûl*, p. 284 relates this opinion to Abû Hanîfa himself. For another Shâfi'ite opinion, see al-Khatîb al-Baghdâdî, *al-Faqîh wa al-Mutafaqqih*, 1:137.

If it is said: [Since you cannot conclusively charge one who reports on common necessities to be a liar], then how would you base your rejection of a person whose lying is known decisively? Take, for [instance], the evacuating of excrement from either bodily passage, since man needs to relieve himself repeatedly during the course of a day and night. Yet [precisely] because this annuls ritual purity, the Messenger of Allâh, صلى الله عليه وسلم, could not be allowed to *not* promulgate its rules, or confidentially reveal it to only a few individuals. For this would lead to the concealing of the *Sharî'a* and the annullment of the worshippers' prayers, for they would be unaware. Therefore, in such cases, promulgation is necessary. Thus, great impetus to transmit this would necessarily emerge. Likewise, how can rules pertaining to the touching of the genitals—which also occurrs commonly—remain concealed?

First, we shall say: This is refuted by the [examples of]*witr* prayer, rules concerning cupping and bloodletting, guffaw, the necessity for bathing after washing the dead, and reciting the second call for prayer either once or twice—all of which are common necessities that have been established by solitary reports. So, if they claim that the commonality of these necessities is not the same as the common occurrence of excretions, we shall say that the common necessities with regard to the touching and feeling [of the genitals] is not like excretions because a long period may pass without a person touching or feeling his genitals except when excreting, just as he only occasionally resorts to cupping or bloodletting. Therefore, there is no difference.

The **second** answer, which is substantiated, is that cupping

and blood letting, although not repeated daily, occur frequently; so how could their ruling be concealed such that it results in nullifying the prayers of many people? And even if it did not occur frequently, still how was it entrusted to solitary reporters?

Actually, there is no reason for it except that Allâh, تعالى, did not oblige His Messenger, صلى الله عليه وسلم, to promulgate all rules himself. Rather, He obliged him to promulgate some and permitted him to leave people to learn others through solitary reports, as He permitted him to leave people to *qiyâs* in regard to the rule of usury. Otherwise, it would have been easy for him to say, "Do not sell food in exchange for food . . . ," or "Do not sell that which is measured in exchange for that which is measured . . . ," so that their would have been no need to make an inference from the six mentioned [commodities].[94]

Accordingly, it is possible to include common necessities as part of the public interest, requiring recourse to solitary reports. There is no absurdity in this. for in these cases, the truthfulness of the transmitter is possible, which necessitates believing him. The reason for promulgation is neither the 'commonness' nor the 'rarity' of needs. Rather, its reason is the charging of worship and obligation by Allâh. Yet what *many* people need, such as cupping

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[94]This is in reference to a *ḥadîth* in which the Prophet specifically prohibitted the exchange of six commodities except in direct exchange of equal volumes — gold for gold, silver for silver, wheat for wheat, dates for dates, raisins for raisins, and salt for salt. For the various opinions held by the *fiqhî* schools, see the elaborate treatment in Zaḥîlî's *al-Fiqh al-Islâmî wa Adillatuhu*, 4:671-702 and Ibn Rushd, *Bidâyat al-Mujtahid*, 2:111-128.

and blood letting, is similar to what *most* commonly need in that they must not be hidden according to the *Sharî'a*.

If it is said: What is the criterion for what the Messenger, صلى الله عليه وسلم, has been obligated to promulgate?

We shall say: If you want a criterion for its rational permissibility, there is none. For it is the right of Allâh to obligate His Messenger with whatever He wills. But if you are searching for its actual occurrence, it is known only from the practice of the Messenger of Allâh, صلى الله عليه وسلم.

When we examine the revealed sources, we find that they are of four types:

First, there is the Qur'ân. We know that there was great concern to widely promulgate it.

Second, there is the five pillars of Islam, that is, the declaration of faith, prayer, alms, fasting, and pilgrimage. The Prophet has promulgated them in a way that they are known to the common and the elite alike.

Third, there is the principles of transactions—which are not necessary [matters of widespread promulgation]. For example, there are the principles of sales and marriage, for they have reached us via *tawâtur*. Even matters like divorce, manumissions, possession of properties, freeing a slave upon the owner's death or payment, and freedom contracts for slaves have reached the scholars via *tawâtur*. Decisive proof has been established on the basis of either *tawâtur* or the reporting of individuals before a large congregation who remained silent [in approval]. Indeed,

proof is established based on this, even though the common people did not share certain knowledge with the scholars. Rather, in such cases the common people are obligated to accept [knowledge] from the scholars.

Fourth, there are the details of this principle, namely what voids prayers or other types of worship, or what nullifies purity, such as touching and feeling, vomiting, and repeatedly wiping the head [for ablution]. Some of these [details] have become widely known, /1:173/ while others have been transmitted via solitary reports.

Indeed, it is possible for them to be among the common necessities. So, there is neither absurdity nor impediment in what has been transmitted via solitary reports. For it is possible that Allâh did not oblige the Prophet to promulgate what he did, although it was permissible.

As for what was entrusted to individuals [by the Prophet], it is possible that they were obliged to promulgate it. But what actually had happened indicates that the religious obligation was fulfilled. Never did [the Prophet] disobey the command of Allâh, تعالى , in any way.

This is the completion of the discussion on reports. Allâh knows best.

THE THIRD OF THE PRINCIPLE SOURCES

AL-IJMĀʿ [CONSENSUS]

Comprising [Three] Chapters

CHAPTER ONE: ESTABLISHING [*IJMĀʿ*] AS A VALID PROOF AGAINST THOSE WHO DENY IT

One who attempts to establish that *ijmâʿ* is a valid proof must first clarify the meaning of the term *ijmâʿ*; second, explain its concept; third, demonstrate that it is possible to ascertain it; and fourth, explain the reasons for its being a valid proof.

As for the clarifiying the term *ijmâʿ*, we use it exclusively to mean the unanimity of the ***ummah*** of Mu<u>h</u>ammad, صلى الله عليه وسلم, particularly on certain religious issues. Its linguistic meaning is ***unanimity*** and ***resolution***; thus it combines both of these.

So whosoever resolves something and completes his determination to implement it, it is said, *'Ajmaʿa.'* When a group agrees upon something, it is said, *'Ajmaʿu.'* This may apply to the *ijmâʿ* of the Jews or the Christians, as well as unanimity in other than religious affairs.

But in technical usage, this term has been specified as we have mentioned. Al-Na<u>zz</u>âm[1] held that *'ijmâʿ'* is an expression for

[1]Abû Is<u>h</u>âq Ibrâhîm b. Sayyâr b. Hânî al-Ba<u>s</u>rî al-Na<u>zz</u>âm is a

every statement whose proof is evident, even if it is a statement of an individual—which is contrary to both the linguistic and technical [usages]. But he tailored it to his own view, for he did not see *ijmâ'* as a proof. Yet he had heard, by way of *tawâtur*, of the prohibition against opposing *ijmâ'*. So he said that it is every position whose proof has been established.

As for the second [point], namely its concept, the proof of its conception is its existence. For we have found the *ummah* in unanimous agreement that the [daily] prayers are five and that the fasting of *Ramadân* is obligatory. How could it be impossible to conceive this when the whole *ummah* is religiously charged to adhere to the [*Sharî'a*] texts and decisive proofs, and they are subject to punishment in opposing them. So, just as their unanimity is not impossible on things like eating and drinking, for the impetus [of all] agree here, similarly their [unanimity] is not impossible on following the truth and avoiding the fire.

If it is said: With all its numerousness and diversity of motives in admitting the truth or being obstinate about it, how will the *ummah's* opinions agree? This is impossible on its part, as is, say, their agreement to eat raisins on the same day.

We shall say: There is nothing preventing their consuming raisins particularly. Yet all of them have motive to admit the truth.

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well-known Mu'tazilite (d. 230/845). For reference to his works, see Sezgin, *Geschichte*, 1:618; and *The Shorter Encyclopaedia of Islam*, pp. 445-446.

Why should it not be so! when the unanimity of all Jews on falsehood—despite their large numbers—is conceivable? So, why is it not conceivable that all Muslims should agree unanimously on truth? For numerousness is effective only when like things, motives, and impediments conflict, /1:174/ while *ijmâ'* is mainly based on *mutawâtir* texts and matters necessarily known by circumstantial evidences. All sane people are on one path in this regard. Certainly as to whether *ijmâ'* can be conceived on the basis of *ijtihâd* or *qiyâs*, this is a matter about which there can be discussion, which will come, God willing.

Now, on the third point, namely whether it is conceivable for *ijmâ'* to be ascertained, some have said: If ascertaining of *ijmâ'* is conceivable, then who will pursue it, considering their [peoples] dispersal through the lands?

We shall say: Knowing their [opinions] is conceivable by communicating with them verbally if they are of such numbers that their meeting is possible. If it is not possible, then the opinions of certain people can be known verbally, while the opinions of others can be known through *mutawâtir* reports about them, just as we have known of the prohibition against executing a Muslim for [killing] a *dhimmi*[2] is the opinion of all the Shâfi'ites, as well as the annulment of marriage without a guardian; and as we hav come to know that the view of all Christians is [belief in]

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[2]For comprehensive treatment of the subject on the definition and the status of *dhimmis*, see 'Abd al-Karîm Zaydân, *Aḫkâm al-Dhimmiyyîn wa al-Must'aminîn fî Dâr al-Islâm* (Baghdâd: University of Baghdâd, 1963).

trinity, and that the belief of all the Magians is dualism.

If it is said: The opinions of the Shâfi'îtes and Hanafites are based on one source, which is al-Shâfi'î and Abû Hanîfa, and the opinion of one person can be known. Similarly, the belief of Christians is based on Jesus, عليه السلام. But as for the opinion of an unencompassable number of people, how will it be known?

We shall say: The positions of the *ummah* of Muhammad, صلى الله عليه وسلم, concerning the affairs of religion are based on what they understood from Muhammad, صلى الله عليه وسلم, and what they heard from him. Furthermore, since the *influentials*[3] are limited, and it is possible to know the view of one, it is also possible to know the view of the second, or up to ten or twenty.

If it is said: Perhaps one of them would be in the captivity of the infidels or the lands of Byzantium.

We shall say: It is necessary to have recourse to him. The opinion of a captive can be transmitted like the opinion of others; so it is possible to know it. Whoever doubts his [the captive's] agreement with the rest would not be establishing consensus.

If it is said: If his opinion can be known, perhaps he may revert from it afterward.

We shall say: His retraction has no influence after *ijmâ'* has occurred, for he is compelled by it [the *ijmâ'*]. Nor is retraction

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[3]People who are determinants of affairs.

conceivable by all of them, for then one of the two *ijmâ's* would be in error, which is absurd, based on the proof of revealed authority.

As for the fourth point, namely establishing valid proof for the impossibility of error on the part of the *ummah*, the whole importance of the matter resides in this point, and its being proof is known only through the Book, *mutawâtir Sunna*, or Reason. As for *Ijmâ'*, it is not possible to establish it on the basis of *ijmâ'*. Indeed, they [the establishers of *ijmâ'*] desire to receive [proof] from the Book, the *Sunna*, and Reason. But the strongest of these is the *Sunna*.

We shall now mention these three approaches.

The first approach. Adhering to the Book, namely His statements, تعالى:

> "*Thus We have appointed you a middle* ummah *that you might be witnesses upon the people. . . .*"[4]

> "*You are the best* ummah *ever brought forth for people, bidding good and forbidding evil. . . .*"[5]

> "*Of those We created are an* ummah *who guide by the truth and by it act with justice.*"[6]

> "*And hold fast to Allâh's bond, together, and do not scatter.*"[7]

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[4]Qur'ân, 2:143.

[5]Qur'ân, 3:110.

[6]Qur'ân, 7:181.

[7]Qur'ân, 3:103.

> "*And in whatsoever you differ, its judgment belongs to Allâh.*"[8] (implying that what you have agreed upon is, indeed, truth).

> "*. . . If you dispute in anything, refer it to Allâh and the Messenger. . . .*"[9] (Also, its implication is /1:175/ that what you have agreed upon is truth).

All these are extrinsic [proofs] which do not specify the objective. In fact, they do not even point out extrinsic indicators, though the strongest of them is His statement, تعالى:

> *And whosoever opposes the Messenger after guidance has become clear to him and takes a path other than the path of the believers, We shall turn him over to what he has turned to and We shall roast him in Jahannam,—an evil homecoming*[10]

For this necessitates the following of the path of the believers. This is the verse that al-Shâfi'î relied upon.

We have treated this at length in [our] book, *Tahdhîb al-Uṣûl* [*Refinement of the Principles*],[11] raising questions about this verse [as a proof for *Ijmâ'*] and rebutting it. As we see it, this verse is not a decisive text for this purpose. Rather, what is obvious is that its intended meaning is that whosoever fights the Messenger, opposes him, and follows other than the path of the believers in supporting,

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[8]Qur'ân, 42:10.

[9]Qur'ân, 4:59.

[10]Qur'ân, 4:115.

[11]This is the second reference to this extensive work on *uṣûl*, which, unfortunately, is unlocated.

aiding, and repelling enemies from him, *"We turn him the way he turns."* Thus, it is as if He was not content with abandoning the opposition [against the Messenger] until they joined him, following the path of the believers in aiding, defending, and submitting to him in what he commands and prohibits. This is evident and spontaneous to the understanding. But if it is not apparent, then it is [at least] plausible. So if the Messenger, صلى الله عليه وسلم, had explained the verse in that manner, it would have been accepted. Nor would it render this an abrogation of the text, as if one explained, for example, *opposing* as *agreeing* and *following* the path of the believers as *deviating* from their path.

The second approach. This is the strongest, namely holding fast to his saying, صلى الله عليه وسلم , "My *ummah* shall not agree on a mistake."[12] Now this, with respect to its wording, is stronger [than the above verses] and more indicative of [our] purpose. Yet it is not *mutawâtir*, like the Book. While the Book is *mutawâtir*, however, it is not an explicit [proof for *ijmâ'*].

So the way to establish the proof, in our view, is [to show] that the transmissions from the Messenger, صلى الله عليه وسلم, display in varied words agreeing in meaning that this *ummah* is protected from error. It has become well-known at the tongue of the notables and the most reliable Companions, like 'Umar, b. Mas'ûd,

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[12]The *ḫadîth* is found in *Sunan* b. Mâjah, 2:1303; al-Nîsâbûrî, *Mustadrak*, 1:115-116; and al-Ḫaytamî, *Majma' al-Zawâ'id*, 5:217-219.

Abû Sa'îd al-Khudrî, Anas b. Mâlik, b. 'Umar, Abû Hurayra, Hudhayfa b. al-Yamân, and others whose mention would be too lengthy, to the effect that he said, صلى الله عليه وسلم:

> "My *ummah* will not be unanimous on an error."
>
> "Allâh will not let my *ummah* come together on an error."
>
> "I have asked Allâh, تعالى, that He not bring together the whole of my *ummah* on an error. And He granted it."
>
> "Whosoever is pleased by making the wide space of Paradise his abode, he must keep to the *ummah*. For their supplication shields them from others."[13]
>
> "Satan accompanies the loner. He is more remote from two."
>
> "Allâh's hand is with the *ummah*, and Allâh gives no attention to the divergence of one who splits [from the *ummah*]. "
>
> "One group shall always remain predominating over truth, unharmed by whosoever disagrees with them."

which has also been transmitted:

> "The disagreement of whosoever differs with them shall not harm them, except for the hardship that confronts them."
>
> "Whosoever secedes from the *ummah* or separates even the span of a hand, he has doffed the noose of Islam from his neck."
>
> "Whosoever separates from the *ummah* and dies, his death is in *jahaliyah*."

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[13]This translation is based on 'Izz al-Dîn b. al-Athîr's interpretation in *al-Nihâya fi Gharîb al-Hadîth wa al-Athar*, 5 vols. ed. M. Tanâhî (Riyad: Maktabat Islâmî, 1963), 1:461 and 2:122.

These reports have remained prevalent among the Companions and the Successors up to our times. None among the transmitters of the *ummah's* forbearers and its successors repudiated them. Rather, they are accepted by those favoring the *ummah* and those differing with it. The *ummah* has ever continued /1:176/ to use these reports as arguments both in the fundamentals of religion and its applications.

If it is said: Where is the proof when the claim of *tawâtur* concerning these individual reports is impossible and *ahâd* [solitary] transmission does not yield certain knowledge?

We shall say: There are two ways to establish the grounds for proof:

First, we claim necessary knowledge that the Messenger, صلى الله عليه وسلم, has exalted the status of this *ummah*. He also informed on its immunity from error by the totality of these various reports, though solitarily they do not attain *tawâtur*. Yet is in this very way that we find ourselves compelled to recognize the bravery of 'Alî, the generosity of Hâtim, the legal insight of al-Shâfi'î, the eloquence of al-Hajâj, the preference of the Messenger, صلى الله عليه وسلم, for 'A'isha from among his wives, and his great regard for his Companions and praise of them, though no single report from among these is *mutawâtir*. Rather denial of each one them is possible, if we consider it in isolation. But this is not possible with regard to the totality.

This case resembles what is known from the totality of circumstantial evidences, which singly are not immune from doubt.

However, this doubt is removed from its totality so that necessary knowledge accrues.

The second way is that we do not claim compulsory but discursive knowledge from two aspects:

The first is that these *ḫadîths* remained well known among the Companions and the Successors, who relied on them in establishing *Ijmâ'*. No one has voiced opposition or rejection to it until the time of al-Naẕẕâm. It is impossible in light of deep-seated habit that the peoples of varied ages agree to submit to something on whose rectitude a proof was not raised, over and agaist differing dispositions and the disparity of ambitions and views in rejecting or accepting [things]. Therefore, a judgement established by a solitary report never ceases to be based on an opponent's dispute or an expression of irresolution.

The second aspect is that those people who brought these reports as their argument established with them a decisive principle, namely *Ijmâ'*, which they ruled upon the Book of Allâh, تعالى, with, as well as the *mutawâtir Sunna*. It is ordinarily impossible to submit to a report abrogating the Book of Allâh—which is decisive—except when [the report] relies on a decisive base. As for the abrogation of a decisive [text] by that which is not decisive, this is unknown. So let none be astonished, nor should one question how one may abrogate the decisive Book by *Ijmâ'*, which relies on a report whose authenticity is unknown? Rather, how did the whole *ummah* remain heedless of it until the time of al-Naẕẕâm, so that he particularly points it out?

Here is the point of proof.

Those who oppose *ijmâ'* use three approaches: Rejection, interpretation, and contradiction. The first position concerns rejection, and there are four discussions here.

The first is their saying: Perhaps someone did oppose these reports or refute them, but it has not been transmitted to us.

We shall say: This also is belied by *'âda* [the nature of the case][14], for *Ijmâ'* is the greatest of the religious principles. Hence, if any opponent would have differed with it, indeed it would have been a great affair and that opposition would have become well known. For if the dispute of the Companions concerning the blood money for the fetus did not become effaced, nor the question of *haram*. nor the punishment of [alcohol] consumption, then how did this opposition to a great principle become obliterated, where pronouncing [one] astray and a heretic is required for him who errs /1:177/ in its rejection and affirmation? And how did the opposition by al-Nazzâm become so well known despite the fact that he was insignificant and of mean rank, while the disagreements on the part of great Companions and Successors are concealed? This is something which has no place at all in rational thought.

The second discussion is their saying: You have brought as

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[14]Fazlur Rahman suggests that the technical meaning of *'âda*, in this context, would be best expressed in English by the phrase *the nature of the case*.

proof for *Ijmâ'* a *hadîth*. Then you use *Ijmâ'* as a proof for the authenticity of that *hadîth*. Granted, they agreed on the soundness [of the report]; but what is the proof that that upon which they agreed—upon its soundness—is correct? Is not this the conflict?

We shall say: No. Rather, we brought as proof for *Ijmâ'* the *hadîth*, and for the soundness of the report, the fact that it remained through the ages without repudiation and dispute—despite the fact that it by the nature of the case requires rejecting the establishment of a decisive principle that rules over [other] decisive [principles] by a report whose rectitude is not known. Therefore, we know through *'âda* that this report is decisive, not through *ijmâ'*.

Now, *'ada* is a principle from which [several kinds] of knowledge are obtained, for through it the falsity of the opposition's claim against the Qur'ân and its arbitration is known. Also through it one knows the falsity of the claims that there is a text about the imamate, that the late morning prayer [*duhā*] is obligatory, and that the fasting of *Shawwâl* is obligatory . For if these were so, this would have been by the nature of the case impossible to have remained silent about it.

The third discussion is their saying: On what basis do you object to one who says that perhaps they established *Ijmâ'* not on the basis of these reports but by another proof.

We shall say: It is evident that they have argued on the basis of these reports for prohibiting opposition to the *ummah* and threatening whoever secedes from the *ummah* and opposes it. This

is better than saying that if they had a sound basis for this, it would be manifest and well known. For it has been transmitted that they relied upon verses [of the Qur'ân] as well.

The fourth discussion is their saying: Since the Companions knew the rectitude of these reports, why did they not mention to the Successors the way their rectitude [was established] so that doubt would have been uprooted. Thus, they would have shared with them this knowledge?

We shall say: For they knew his specification, عليه السلام, of the immunity of this *ummah*—on the basis of a totality of circumstantial evidences, other indications, and the reiteration of words and reasons—necessarily indicated that his intention was to elucidate the repudiation of error from this *ummah*. These circumstantial evidences do not fall under narration, for there is no end to their expressions.

If they were to narrate them, then each one of them would be liable to doubt. Hence, they were content with the Successors knowledge, in that through a suspect report, one cannot establish a decisive principle, and according to*'âda*, it is to be accepted. So *'âda* was much stronger with reference to the Successors than narration.

The second position concerning interpretation is that those [denying *Ijmâ'*] have three interpretations.

The first is that his statement, صلى الله عليه وسلم, "My *ummah* will not agree on an error," addresses infidelity and innovation. So perhaps he meant the immunity of the whole [*ummah*] from

infidelity based on interpretation and doubt. As for his saying, "*'alâ al-khaṯa'*," it is not *mutawâtir*. Even if it is correct, then the term '*khaṯa'*' [mistake] is generic, and it is possible to take it to mean *kufr* [infidelity].

We shall say: The term '*d̲alâl*,' in its original linguistic sense does not correspond to '*kufr*.' Allâh, تعالى, has said, "*And He found you* d̲âllan *[astray], then He guided [you]*";[15] and He said, تعالى, relating about Mûsâ, "*I did it then, being one of those that stray* [d̲âllîn] /1:178/"[16] He did not allege 'from the kâfirîn.' Rather, he meant 'from the mistaken.' Thus, it is said, "So and so strayed from the path"; and, "Astray is the endeavor of so and so." All this is 'error.' Why should it not it be so! when indeed necessarily understood from these words is the exaltation of the prestige of this *ummah*, and its peculiarity in this moral excellence?

As for immunity from infidelity, He has bestowed this upon 'Alî, ['AbdAllâh] b. Mas'ûd, 'Ubay [b. Ka'b], and Zayd [b. Thâbit], according to the view of al-Naz̲z̲âm. For they died abiding by the truth.

But how many individuals have been immune from infidelity until they died? So what is the peculiarity for the *ummah*? Hence, this implies that he meant something from which individuals are not immune—forgetfulness, mistakes, and lying—whereas the *ummah* is immune from them, attaining the same status as the

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[15]Qur'ân, 93:7.

[16]Qur'ân, 26:20.

Prophet, صلى الله عليه وسلم, regarding immunity from error in religion.

Now, that which is generated from without religion—war, peace, developing a town—in general, this requires immunity for the *ummah*, as well. However, this is dubious. Yet in religious affairs, the necessity of immunity from error is decisive, as it was for the Prophet, صلى الله عليه وسلم. For he did err in the matter of the pollenization of date palms; then he said, "You know the affairs of your world, and I know the affairs of your religion."

The second interpretation is their saying: The thrust of this [argument] is that it be general, necessitating the *ummah's* immunity from *all* errors, where it is possible that its meaning be *some* kinds of error, such as testifying on the Day of Judgement, what conforms to a *mutawâtir* text, or that which conforms to rational proof, excluding whatever is based on *ijtihâd* and *qiyâs*.

We shall say: No one from the *ummah* has gone to such minute exposition that whatever rationally indicates a basis warranting their error in something indicates its warranting in something else. Furthermore, since there is no differentiation, there is no specification with which to proceed arbitrarily without any proof. In addition, no one specification is worthier than next.

Or perhaps he has blamed whosoever opposes the *ummah*, and has commanded that we conform. If it were not known where the immunity lies, following it would be an impossibility, unless immunity is absolutely established and the virtue and nobility of this *ummah* is proven by it.

As for immunity from some [errors] to the exclusion of

others, this is established for every infidel, let alone the Muslim, for there is no person that errs in everything. Rather, every human being is immune from error in some things.

The third interpretation is that [they say] his *ummah*, صلى الله عليه وسلم, namely all of those who believe in him until the Day of Resurrection, the whole of them—from the beginning of Islam until the end of the life of this world—will not agree on an error. Rather, every judgment that has been passed unanimously by [Muslims] of all the generations after the raising of the Prophet, صلى الله عليه وسلم, is correct. For *ummah* expresses *the whole*.

How could this be! when those who have died in our times are of the *ummah*, and the consensus of those after them is not the consensus of the entire *ummah*. The proof for this is that if they had opposed [consensus] and then had died, consensus after them would be inconsequential. Also, it is as if those before us who opposed [consensus] are not in agreement—even though they are dead.

We shall say: Just as it is not possible that one intends by *ummah* to include the insane, the children, the still born, and those in-womb, though they are part of the *ummah*, it is not possible that one intends by it the dead and those who have not yet been created. Rather what is understood [by the word *ummah*] is people for whom differing and agreeing is conceivable /1:179/. But agreement or disagreement is inconceivable on the part of the non-existent and the dead. The proof for this is that [the Prophet] commanded the following of the *ummah*. He denounced those who

deviated from conformity. Thus, if the intended meaning was what they mentioned, then following and disagreeing are conceivable only on the Day of Resurrection, not in this world. It is therefore known decisively that its intended meaning is a consensus that can be violated and opposed in this world, which means those who exist in each generation.

Now when a person dies but the influence of his opposition remains, then his opinion does not die with his death. Sufficient discussion of this will come later, Allâh, تعالى, willing.

The third position is objections based on [Qur'ânic] verses and *ḥadîths*.

As for the verses, all that they contain is prohibition against infidelity, apostasy, and wrong doing. This is general for everyone. If this were not possible, the how would they be prohibited from this, as with His statement, تعالى:

> *"And that you say concerning Allâh what you do not know;*[17]
>
> *"Whosoever among you turns from his religion and dies disbelieving.* [18]
>
> *"And consume not your goods from among yourselves in vanity";*[19]

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[17]Qur'ân, 7:33.

[18]Qur'ân, 2:217.

[19]Qur'ân, 2:188.

and other such examples?

We shall say: This is not a prohibition for them from coming together as a whole[20]; rather, this is a prohibition for individuals, even though everyone per se is included in the prohibition. But even if we concede this, still, neither the existence of what is prohibited nor the possibility of its occurrence is a condition for prohibition. For Allâh, تعالى, knew that not all sins would occur with them. Yet, He prohibited them from *all*. Also, that which is contrary to what is known does not occur. He said to His Messenger, صلى الله عليه وسلم, *"If you were to commit* shirk, *all your deeds would come to naught"*[21]; and *"Do not be of the ignorant ones . . . ,"*[22] while He knew that He had made him immune from these [sins].

Then there are the reports of his saying, عليه السلام:

> Islam began alien, and it shall return to being alien as it began.[23]
>
> The best generation is mine; then those who succeed them; then those who succeed them; then lying will become rampant, so much so that a man will swear without being asked to take an oath and will offer himself as a witness

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[20]The context necessitates this interpretation. The Arabic text has *'an al-ijtimâ'*, meaning *from coming together* which does not make sense.

[21]Qur'ân, 39:65.

[22]Qur'ân, 6:35.

[23]Wensinck, *Concordance et Indices de la Tradition Musulmane*, 5:437.

without being asked to give testimony.

The Hour will not come except on the evil ones of my *ummah*.

We shall say: These and their like indicate that disobedience and lying will become rampant. But it does not indicate that none will remain who hold fast to the truth. Nor does it contradict his saying, صلى الله عليه وسلم:

> A group from among my *ummah* will always remain with the truth until Allâh's command comes and until the *Dajjâl* [anti-Christ] appears.

Why should it not be so! since these reports do not approach in rectitude and prevalence the *ḥadîths* which we have relied upon.

The third approach is reliance on rational method. An explanation of this is that the Companions, when they came to a decision and declared that they were conclusive in it, would only hold it as conclusive on decisive grounds. And since they were so numerous that their numbers reached the point of *tawâtur*, then by the nature of the case it is impossible for them to deliberately lie, and it is impossible for them to err such that not one of them would become aware of the truth.

In addition, their arrival at a final decision without any decisive proof is an error. Thus, their being decisive inappropriately is, in the nature of the case, impossible. So, when they ruled on the basis of *ijtihâd* and agreed /1:180/ upon it, it should be known that the Successors emphatically disapproved of their [the Companions'] opponents and that they would decisively

hold to [the Companions' position]. Thus, their decisiveness in this would be out of place. This [decisiveness] is also impossible except on conclusive grounds. Otherwise, it is impossible by the nature of the case that truth should evade all them, in spite of their numerousness, such that not one of them realizes the truth.

Similarly, we know that if the Successors agreed upon something, the successors of the Successors would disapprove and decisively denounce the opponents [of the Successors]. But this decisiveness would be out of place since this is impossible in the nature of the case except on conclusive [proofs].

In this manner, they say: If the *people of influence*[24] were reduced to a number short of *tawâtur*, then, in the nature of the case, it is not impossible for them to be liable to error or to deliberately lie for a motive. Therefore, there is no valid proof for this.

But this approach is weak in our view because the source of error is either deliberate lying or their assumption of that which is not decisive as decisive. The first is not conceivable with a number [required] for *tawâtur*. As for the second, it is conceivable, since the Jews, [for example], have decisively held the falsity of the prophethood of Jesus and Muhammad, عليهما السلام, and they exceed the number [required] for *tawâtur*. But their decisiveness is improper, for they assumed what is not decisive to be decisive.

[24]Literally, *the people of loosening and binding*, meaning the influential people in society whose opinions hold sway, more or less, over the masses.

Those who deny the temporal origin of the world and prophethood, and commit all kinds of [heretical] innovations and aberrations, their number reaches the number [constituting] *tawâtur*, and truth can accrue by their reports; but they have erred by being decisive inappropriately. One who posits this must consider the consensus of the Jews and the Christians as valid proof and that it is not peculiar to this [Muslim] *ummah*. Yet they [the Jews and the Christians] have agreed upon the falsity of the religion of Islam.

If it is said: This is reliance on customary behavior, and in supporting the second approach you were inclined to *'âda*.

We shall say: *'Ada* does not [usually] prevent the number constituting *tawâtur* from deeming what is indecisive as decisive. Therefore, we said that the condition of a *mutawâtir* report is that it should be based on something perceptible. Yet the nature of the case bars compliance with and silence about those who reject the Book and *mutawâtir Sunna* on the basis of an *ijmâ'* whose proof is an uncertain report that is not decisive.

Now, all that is *necessary* is known through sense perception, circumstantial evidence, or intuition—and their mode is one. People are agreed on its attainment, and the nature of the case makes it impossible for the people of *tawâtur* to neglect it. But as for that which is discursive, its methods vary. So, it is not inconceivable in the nature of the case for the people of *tawâtur* to agree upon error with regard to it. Thus, this is the difference between the two approaches.

If it is said: [As for] your reliance on this second approach, that is, that what they agreed upon is truth and not error, what is the proof for the obligatoriness of its observance? For every *mujtahid* attains the truth, and it is not obligatory upon another *mujtahid* to follow him. Although a false witness is a liar, a judge must heed him. Consequently, requisite compliance is one thing, but a thing being true is something else.

We shall say: The *ummah* has agreed on the necessity of adhering to *Ijmâ'*, and that it is [the kind of] truth which must be followed. In accordance with their being true in their statements, it is necessary to follow *Ijmâ'*. Furthermore, we say that the principle for every truth whose truth is known is /1:181/ necessary compliance. Complying with a *mujtahid*, however, is obligatory, except on the part of [another] *mujtahid* who also is correct. So, truth that accrues through his *ijtihâd* is preferred to that which has accrued by the *ijtihâd* of others, as far as the former is concerned. Also, a lying witness—if it is known that he is a liar—must not be followed.

This is supported by his [the Messenger's] denunciation of one who opposes the *ummah*, and by [the fact] that he [the Messenger] has mentioned this in the context of praising the *ummah*. But this is realized only by the obligatoriness of compliance [with *Ijmâ'*]. Otherwise, the only meaning that remains is that they are correct if they attain the proof of the truth. This is possible with respect to everyone of the individual believers. So it offers neither praise nor any [peculiar] distinction.

CHAPTER TWO: EXPLANATION OF THE CONSTITUENTS OF *IJMA'* IT HAS TWO CONSTITUENTS: THE PARTICIPANTS AND *IJMA'* ITSELF

The First Constituent: The Participants

The [participants] are the *ummah* of Muhammad, صلى الله عليه وسلم. The apparent [meaning] of this includes all Muslims. But for every apparent [meaning] there are two distinct extremes concerning omission and confirmation [of participants], as well as similar intermediates.

As for what is clear concerning confirmation, this refers to every *mujtahid* whose *fatwâ* is accepted. He is definitely of the people of influence [*ahl-al-hall wa al-'aqd*] and his agreement is necessary for *Ijmâ'*.

As for what is clear concerning omission, this refers to the children, the insane, and those in the womb, even though they are regarded as part of the community. We know certainly that he, صلى الله عليه وسلم, did not intend with his saying, "My community will not agree on error," other than those whose agreement is conceivable. Furthermore, dispute in a question occurs only after understanding it. Therefore, one who does not understand does not enter into [dispute].

Between these two extremes are the common people, the *faqîh* [legist] who is not an *usûli* [jurist], an *usûlî* who is not a *faqîh*, the *fâsiq* [unrighteous] *mujtahid*, the heretic, and the novice among the Successors who approached the rank of *ijtihâd* in the time of the Companions. Therefore, we shall describe each one in a

discussion.

I. DISCUSSION: It is conceivable to include the common people in *Ijmâ'* because the *Sharî'a* is divisible into that which the common people and those of distinction share in understanding, such as the five prayers, the obligatoriness of fasting, *zakât*, and *hajj*. This has been unanimously agreed upon. The common people concur with those of distinction on [this] *ijmâ'*. But [it is further divisible] into that whose [knowledge] is confined to specialists, such as the details of the conditions of prayer, business transactions, manumissions, and *istilâd*.[25] The common people are in agreement that the truth with regard to this is that upon which influential people and the specialists unanimously agree, without concealing any opposition to it at all. Thus, they are also in agreement about it. It is appropriate to call this the *Ijmâ'* of the entire *ummah*, such as in the case when the army empowers a group from among the people of wisdom and reflection to make peace with the community of a fortress. When they agree with them on something, it is said that this occurred with the agreement of the whole army. Therefore, all that has been agreed upon by the /1:182/ *mujtahids* is agreeable with regard to the common people, and based on it the consensus of the *ummah* is completed.

If it is said: When a common person is in opposition to an

[25]This refers to seeking children from a slave girl. Consult Qal'ajî, *Mu'jam Lughat al-Fuqahâ'*, p. 67.

occurrence that the specialists of the same era have unanimous agreement on, is *ijmâ'* constituted without him? And if it is, how is the common person excluded from the entire *ummah*? And if it were not constituted, how could the position of a common person be considered?

We shall say: People have disputed this. Some of them say that it is not constituted because he is of the *ummah*. Consequently, his concession is required either in general or in particular. Some others have said—which is more correct—that it is constituted based on two evidences.

The **first** is that a common person does not possess the capacity to seek the truth because he does not have the skill for this purpose. So he is similar to a child or an insane person with regard to the deficiency [of the skill]. Nothing is understood by "immunity of the community from error" other than immunity on the part of those for whom it is conceivable to arrive at the truth, that is those who have the capacity.

The **second**, which is stronger, is that the first generation, the Companions, agreed that the common people should not be taken into consideration concerning this matter—I mean the leading personalities of the Companions and their masses. For if a common person makes a statement [on a technical issue], it is certain that he is saying it out of ignorance, that he does not know what he is saying, and that he does not possess the capacity to agree or disagree about it. Therefore, it is not conceivable for this to issue from an intelligent common man because an intelligent person would delegate what he does not know to he who knows. But this

case is imaginary and does not actually occur at all.

What indicates the validity of *ijmâ'* is that a common man disobeys by his opposition to the *'ulamâ.'* This has been made unlawful for him. What, for example, indicates his disobedience is what has come down concerning the denunciation of ignorant rulers when they go astray and lead [others] astray without knowledge, as in His saying, تعالى, "*. . . Those of them, whose task is to investigate, would have known the matter. . . .*" [26] So He turned them from dispute to the people of investigation. Also, many reports have been transmitted obliging recourse to the *'ulamâ'* and prohibiting the *fatwâs* [authoritative opinions] of the common people based on ignorance and whim. But this does not indicate the occurrence of *ijmâ'* without them because it is possible for a common man to disobey by opposing [the *'ulamâ'*], just as disobeying by opposing a solitary report. But the existence of *ijmâ'* is not realized because of his opposition. Rather, the proof is in the *ijmâ'*. So if it does not occur because of disobedience or by what is not disobedience, then it is not proof and the evidence is what we have mentioned before.

II. DISCUSSION: When we say that the opinions of the common people should not be taken into consideration for lacking the skills, then many a theologian, grammarian, commentator on the Qur'ân, and traditionist may be deficient in the skill through which rules are known.

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[26]Qur'ân, 4:83.

So, some people have said that only the opinions of the independent *imâms* of the *madhhabs* should be accepted as *fatwâs*, such as al-Shâfi'î, Mâlik, Abû Hanîfa, and their likes from among the Companions and the Successors.

Some of them added to the [independent] *imâms* the *faqîhs*—who have memorized the details of the rules and upheld them—but excluded the *usûlî*, who neither masters nor memorizes the details [of *fiqh*].

But the correct [position] is that the statement of an *usûlî*—who knows the avenues of [deriving] rules and how to extract them from the implied meanings, the texts, the cases of command and prohibitions, the general statements, and who knows how the texts impart their meanings, and [knows] how to reason—is worthier of consideration than a *faqîh* who memorizes details. Indeed, he who possesses this expertise is the one who can apprehend rules at will, even if he does not memorize /1:183/ the details.

Now an *usûlî* is capable of this, while a *faqîh* memorizing details is not capable of this. And the proof that the memorization of details is not to be considered is that al-'Abbâs, Zubayr, Talha, Sa'd, 'Abd al-Rahmân b. 'Awf, Sa'îd b. Zayd b 'Amru b. Nufayl, Abû 'Ubayda b. al-Jarrâh, and their likes did not poise themselves for *fatwâs* and did not show themselves as such, as did the three 'Abd Allâhs,[27] 'Ali, Zayd b. Thâbit, and Mu'âdh. But they considered

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[27]This is in reference to 'Abd Allâh b. Mas'ûd, 'Abd Allâh b. 'Abbâs, and 'Abd Allâh b. 'Umar.

their opinion [al-'Abbâs, Zubayr, etc.] if they were in opposition. Why should this not be so! for they were capable of the supreme imamate and since, in particular, most of them were in the *shûra* [counsel] and did not memorize [*fiqhî*] details. In fact, those details were not yet complied; but they knew the Book and the *Sunna* and were capable of understanding them. But, [even] one who memorizes may not remember the minute details of, say, menstruation and testaments. So the basis of the details is analgous to these minute details. Therefore, their memorization is not required.

So, the *usûlî's* opposition must be considered as well as the opposition of a distinguished *faqîh* because they possess the skill in general. They say what their opinion is on the basis of a proof. As for the grammarian or the theologian, they should not be considered because they are [considered] among the masses with respect to this science, except in the case that falls under a question based on grammar or theology.

If it is said: Is this a decisive issue or is it open to *ijtihâd?*

We shall say: It is open to *ijtihâd*. However, if we allow his statement [the grammarian or the theologian] to be considered, *ijmâ'* would become suspect were it to be opposed. Thus, it would not be a decisive proof. On the contrary, it is a decisive proof only when they do not oppose.

As for the opposition of the masses, this does not occur. And if it does happen, it is only in words by the tongue, for he admits his ignorance by what he says. The falsity of his statement is

decisive, such as the statement of a child. As for this case, however, it is not the same.

If it is said: Should, then, an *usûlî* follow the *faqîhs* concerning details they have agreed upon and acknowledged as correct, and will *ijmâ'* then be constituted?

We shall say: Yes, for their is no opposition. The *usûlî* has generally agreed, though he was not aware of the details, just as the *faqîhs* have agreed upon that which the theologians have unanimously decided as correct, such as the questions of ability [*istita'a*],[28] inability, substance, accidents, contradiction, or variations. So *ijmâ'* occurs by general agreement, just as it occurs on the part of the masses because each party is like a commoner in relation to that science which he has not obtained, even though he has acquired another science.

III. DISCUSSION: When a heretic dissents, *ijmâ'* cannot be concluded without him if he has not become an unbeliever. Rather, he is like a *fâsiq* [corrupt] *mujtahid*, and the opposition of a *fâsiq mujtahid* is considered.

If it is said: Perhaps he deceives in manifesting dissent while he himself does not believe it.

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[28] According to Jurjânî, *Kitâb al-Ta'rifât*, p. 19, this term is linguistically synonomous to '*qudrah*,' '*quwa*,' '*wus'*,' and '*taqa*.' But in the technical usage in theology it refers to a character that enables creatures to act or not to act.

We shall say: Perhaps he is telling the truth. His assent is inescapable, even if we do not confirm his conformity. Why should it not be so! For we can know the belief of a *fâsiq* by the circumstantial evidences of his positions in his debates and arguments, while an innovator is credible in that his statements are acceptable, for he does not perceive that he is a *fâsiq*. But when he becomes an infidel through his innovation, then, at that point, his opposition is disregarded, even though he prays toward the *qibla* and believes himself to be a Muslim. For [the word]*'ummah'* does not /1:184/ mean *those who pray toward the qibla*. Rather, [it is] the believers—and he is an infidel, even if he does not perceive that he is a disbeliever. Certainly!

But if he is a proponent of anthropomorphism and the corporeality [of God] and we charge him with infidelity, then one cannot infer falsity of his view on the basis of the consensus of his opponents on the falsity of corporealism, concluding that they constitute the entire *ummah* without him. For their being the whole *ummah* rests on his removal from the *ummah*. Yet elimination from the *ummah* is conditional on proof of [his] infidelity. Therefore, it is impermissible that the proof of [his] infidelity be dependent upon charging him with infidelity. This leads to proving something by itself. Of course, after we have declared him an infidel on the basis of a rational proof, if he dissents on another question, he will not be considered.

If he repents, but still insists on opposing that question which they agreed upon while he was an infidel, then his opposition would not be taken into account after [his return to] Islam because

he was preceded by the *ijmâ'* of the entire *ummah*, and the participants of the *ijmâ'* at that time were the entire *ummah* without him. Therefore, he is similar to an infidel opposing the whole *ummah* who then he becomes a Muslim but still insists on this opposition. Indeed, this should not be taken into account, except in the view of those who require the expiration of the generation of this *ijmâ'*.

If it is said: If a few of the *faqîhs* abandon the *ijmâ'* on the basis of the opposition of a heretic charged with infidelity—were it not known that his heresy necessitates infidelity—and assume that the *ijmâ'* cannot be constituted without him, then should he be excused, since the *faqîhs* do not possess awareness of what interpretations render him an infidel.

We shall say: This question has two forms. One of them is that the *faqîhs* say, "We do not know whether his heresy necessitates infidelity or not." So, in this case they will not be excused about him since they are obliged to have recourse to the scholars of *usûl*. Furthermore, it is incumbent upon those scholars to inform them. Then when they rule upon his infidelity, they [*fuqahâ'*] must comply. But if they are not content with complying, then they must inquire about the proof, so that when its proof is mentioned to them, they understand it absolutely because its proof is decisive. But if one does not comprehend it, he is not excused, just as one who does not understand the proof for the truth of the Messenger, صلى الله عليه وسلم, [is not excused]. For there is no excuse when Allâh, تعالى, has manifested decisive proofs.

The second form is when the innovation and convictions of [the heretic] have not reached [the *faqîh*]. So he abandons the *ijmâ'* because of his [the heretic's] opposition. Thus, he [the *faqîh*] is excused in his mistake and not accountable for it. Moreover, *ijmâ'* is not a conclusive proof with respect to him, just as when an abrogating proof does not reach him. For he is not attributed with negligence, contrary to the first form, where he is able to refer [to the *usûlîs*] and investigate.

So, there is no excuse for him in his abandonment, similar to one who accepts the witness of the Seceders [*Khawârij*] and judges by it. He is mistaken because the proof for the infidelity of the Khârijites [rebelling] against 'Alî and 'Uthmân, رَضِيَ الله عنهما—holding them to be infidels and believing the [shedding of their] blood and the [seizure of their] property [as lawful]—is evident and quickly realized. Therefore, there is no excuse for one who is not aware of it, in contrast to one who judges by false evidence while he is not aware; for there is no way for him to know the truthfulness of the witness. But he has a way of knowing his infidelity.

If it is said: What makes him an infidel?

We shall say: This discussion is lengthy. We have pointed out something /1:185/ of it in [our] book, *Fasl* [29]*al-Tafriqa bayna al-*

[29]It appears that the editor of the Amîrî edition has either made a mistake in the title or that this is a misprint, for the name is found in the sources as *Faysal* not *Fasl*. This work has been translated into German in 1938 by A.I. Runge, and it has been abridged in Spanish in 1929 by Asin Palacios. See Badawî, *Mu'allifât al-Ghazâlî*, p. 167. Check also Ghazâlî, *al-Munqidh min al-Dalâl*, ed. Jamîl Salîba and Kâmil 'Ayyâd, (n.p.: Dâr al-Andulûs,

Islâm wa al-Zandaqa [*A Clear Distinction Between Islam and Heresy*]. The extent that I can mention here is that this is reduced to three categories.

The first is that the very believing of it [*kufr*] is infidelity, like denying the Maker and his attributes and rejecting prophethood. The second is believing in what prevents him from acknowledging the Maker and His attributes and assenting to His messengers. Consequently, he is compelled to reject this since they are mutually contradictory. The third is that which revealed authority states cannot emanate except from an infidel, like worshipping fire, prostrating to an idol, disclaiming a *sûra* of the Qur'ân, denying some of the messengers, regarding as lawful adultery and alcohol, abandoning prayer, and, in sum, rejecting that which is known by *tawâtur* and necessarily as part of the *Sharî'a*.

IV. DISCUSSION: Some people have said that the *ijmâ'* of other than the Companions should not be considered. But we shall refute this. Also, some people have said that after the Companions, the *ijmâ'* of the Successors may be considered. However, the opposition of a Successor in the time of the Companions is disregarded. But the *ijmâ'* of the Companions cannot be repudiated by his disagreement.

But this [position] is corrupt when the Successor has reached the rank of *ijtihâd* before the formation of the *ijmâ'* because he is part of the *ummah*. So the *ijmâ'* of those other than him cannot be

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1401/1981), p. 55.

the *ijmâ'* of the entire *ummah*. Rather, it is the consensus of some, while valid proof is in the *ijmâ'* of all. Certainly if they arrive at *ijmâ'*, and he reaches the rank of *ijtihâd* after their consensus, then he is preceded by the *ijmâ'*. So now he must not dissent, as one who becomes a Muslim after the completion of *ijmâ'*. Proof for this is the statement of Allâh, تعالى, *"And whatever you are at variance on, the judgment thereof belongs to Allâh."* [30]

But there is disagreement on this. This is proven by the concensus of the Companions to tolerate a Successor's difference [of opinion] and by the absence of their objection against him. Therefore, it is *ijmâ'* from them concerning the permissibility of differing. Why should it not be so! For it is known that many of the associates of 'Abd Allâh [b. Mas'ûd], such as 'Alqama, al-Aswad, and others used to give *fatwâs* during the generation of the Companions, as did Hasan al-Basrî and Sa'îd b. al-Musayyab.[31] So how can their dispute not be considered?

In general, a Companion has no excellence over a Successor except by virtue of his Companionship. Thus, if this virtue [were what] qualified *ijmâ'*, then the opinions of the Ansâr could be annulled by the statements of the Muhâjirîn, the opinions of the Muhâjirîn by the statements of the ten,[32] the opinion of the ten by

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[30]Qur'ân, 42:10.

[31]Sa'îd b. al-Musayyab b. Hazn al-Makhzûmî was a prominent Successor (d. 93 H.); see Dhahabî, *Tadhkirât al-Huffâz*, 1:54; Ibn Hajar, *Tahdhîb al-Tahdhîb*, 4:84; and Suyûtî, *Tabaqât al-Huffâz*, p.17, for his biography.

[32]This refers to the ten Companions to whom the Messenger

the statements of the four Caliphs, and their opinions by the statements of Abû Bakr and 'Umar, رضي الله عنهم.

If it is said: It has been reported from 'A'isha, رضي الله عنها, that she rebuked Abû Salama b. 'Abd al-Rah̲mân for equating himself with the Companions, saying, "A chick is crowing with the roosters."

We shall say: What we have cited is decisive. What you have attributed to 'A'isha has not been established except by a solitary report. Even if it were established, it is her opinion. There is no proof in it. Furthermore, perhaps she intended to prevent him from opposing them in what they previously have agreed upon. Or perhaps she disapproved of his dissent in a question which, in her opinion, was not liable to *ijtihâd,* as she objected to Zayd b. Arqam on the issue of *'îna,*[33] thinking that the necessity of discontinuing the pretext was decisive.

Know that controversy is conceivable in this question, according to those who agree that the *ijmâ'* of the Companions can be repudiated by the opposition of one of the Companions. As for one who holds that the opinion of the majority cannot be voided by the minority, however it may be, his statement is not specific to the

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gave tidings that they shall go to Paradise.

[33]*'Ina* is a controversial sales transaction where the form satisfies, in appearance, the letter of the *Sharî'a* Law. An example is given as follows: A commodity is sold at a certain price. But it is—at the time of sale—resold by the buyer to the original seller for a higher price, with the payment deferred until a fixed time. See Zah̲îlî, *al-Fiqh al-Islâmî wa Adillatuhu,* 4:68, 509; and Qal'ajî, *Mu'jam Lughat al-Fuqahâ'*, p 326.

Successors.

V. DISCUSSION: /1:186/ The *ijmâ'* of the majority holds no proof when accompanied by opposition of a minority. Some people say it is a proof. Others say if the minority's number reaches the number of *tawâtur*, it annuls the *ijmâ'*; but if it is less, there is no anullment. The more founded [opinion], according to us, is that infalibility is only established by the unanimity of the *ummah*. But this [case] is not the *ijmâ'* of all; rather, it is disputed. He said, تعالى, *"And whatever you are at variance on, the judgment thereof belongs to Allâh."* [34]

If it is said: Sometimes the word '*ummah*' is applied, meaning the *majority*, just as one says, "Banû Tamîm protect their neighbors and honor their guests," meaning the majority.

We shall say: Those who are proponents of the generic [usage] relate this to the totality. But arbitrary qualification [of the term] is not allowed, except with proof or necessity. Yet there is no necessity for it here. As for those who do not hold this, it is possible that they intend by this less [than the totality]. But the intended portion [of the *ummah*] is not distinguished from what is not intended. Rather, the *ijmâ'* of the entirety is necessary; so it is known that the intended portion is included [with them].

Why should it not be so! while reports have come confirming the scarcity of people of the truth, since he said, صلى الله عليه وسلم, "And

[34]Qur'ân, 42:10.

they, on that day, shall be few"; also, he said, صلى الله عليه وسلم, "And this religion shall return to being alien, as it began alien." Also, Allâh تعالى, said:

> "*Most of them do not understand.*"[35]
>
> "*Few among my servants are thankful.*"[36]
>
> "*How often a little company has overwhelmed a numerous company by Allâh's leave.*"[37]

Since there is no precept and no resistance, there is no escaping considering the view of the entirety.

The second proof is the *ijmâ'* of the Companions on allowing the dissent of individuals.

Upon how many questions have individuals stood alone in opinion, like the solitude of b. 'Abbâs regarding *'awl*,[38] which he rejected?

If it is said: No. Rather they rejected b. 'Abbâs' view of

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[35]Qur'an, 29:63; 49:4.

[36]Qur'an, 34:23.

[37]Qur'an, 2:249.

[38]Linguistically the term means *imbalance*. When applied to inheritence it means the reduction in the shares of the heirs in order to include other beneficiaries. See Qal'ajî, *Mu'jam Lughat al-Fuqahâ'*, p. 325. For an elaborate discussion on *'awl* complete with case examples, see Zahîlî, *al-Fiqh al-Islâmî wa Adillatuhu*, 8:353-358.

"temporary marriage" as lawful and that usury was [only] associated with loans. Also, 'A'isha disputed b. Arqam in the question of *'îna*.[39] In addition, they [the Companions] contested Abû Mûsâ al-Ash'arî's claim that sleep does not void ablution. Again, they disapproved of Abû Talha [al-Ansâri's] opinion that eating hailstones did not break the fast. This is because they stood alone with regard to their [position].

We shall say: No. Rather, they dissented in their opinions against the conveyed *Sunna* which was well known among them. Or, they opposed obvious proofs which had been established in their [the Companions'] view. Then, we say, grant that they rejected this solitary stand [in opinion]. But this individual denies their rejection of him, so *ijmâ'* is not constituted. Thus, there is no valid proof in their denial in the presence of individual dissent.

They[40] have two doubts.

The first doubt is their saying, "A statement of an individual where he reports about himself does not impart [certain] knowledge." So how can this void a statement of a number where certain knowledge accrues through their report about themselves, owing to their attaining the number of *tawâtur*? As a result of this, some people have said that the number of a minority, when it reaches the point of *tawâtur*, disproves *ijmâ'*.

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[39]See note above.

[40]Ghazâlî is refereing to those holding the opposing view in the above argument.

This is faulty on three points:

The **first** is that the truth of the majority, even if it is known, is not the truth of the whole *ummah* and their compact. Yet valid proof lies in unanimous agreement. So, this proof is null and void because they are not the whole *ummah*.

The **second** is that a lie of an individual cannot be known [conclusively], for he may be truthful. Consequently, the issue [under consideration] would not be of unanimous agreement on the part of all the truthful, if he [the individual] were to be truthful.

The **third** is that one cannot consider what they conceal [in their hearts]. Rather, worship is connected to what they manifest. Hence, this is their opinion and their way, not that which they conceal.

If it is said: Is it possible that the *ummah* conceal a contradiction to what it manifests?

We shall say: This, if it is so, /1:187/ however, is only conceivable on the basis of dissimulation and compulsion—and that becomes apparent and well known. But if it does not become well known, it is absurd, for this leads to the concurrence of the *ummah* on error and falsehood, which is impossible on the basis of revealed authority.

The second doubt: Dissent of the individual is deviation from the community, and this is forbidden for him. For the loner is blameworthy, and he is like the isolated sheep [separated] from the flock.

We shall say: '*Shâdh* 'describes one who secedes from the community *after* entering into it. Now, one who enters into *ijmâ'*, his dissent cannot be accepted after it—and this would be deviation. As for one who did not originally enter, he cannot be called *shâdh* [deviant].

If it is said: The Prophet said, عليه السلام, "Stick to the large majority of the *ummah* because Satan accompanies an individual, and he is remoter than two.

We shall say: He meant by this the deviant who rebells against the legitimate leader [*imâm*] and opposes the majority in a way which leads to sedition. Also, his statement, "and he is remoter from two," intends to urge the request of a friend in travel. Therefore, he said, عليه السلام, "Three are a company."

Some of [the opponents] have said: The opinion of the majority is a proof, but it is not *ijmâ'*. But this is arbitrary with regard to their opinion that it is a proof, for there is no evidence for it.

Others have said: Our aim in this is that it is better to follow the majority.

We shall say: This is correct concerning reports and with regard to a follower when he finds no preponderance among *mujtahids* other than quantity. As for the *mujtahid*, he must follow proof to the exclusion of the majority because if one individual opposes him he is not bound to follow him. Even if he [the individual] is joined by another opponent, he is not obliged to follow.

VI. DISCUSSION: Mâlik said that validity lies only in the *ijmâ'* of the people of Medina. Others have said: The valid *ijmâ'* is that of the people of the two sanctuaries, Mecca and Medina, or the two cities, Kûfa and Basra.

Those involved [with this discussion] mean by this only that these locations gathered, during the time of the Companions, the people of influence. So if Mâlik meant that Medina was their place of assembly, then this is conceded to him, provided it did collect [them]. But otherwise, the place itself has no effect.

But even this cannot be conceded. Indeed, Medina never housed all the scholars, neither before the *hijra* nor after it. On the contrary they remained dispersed on journeys, in battles, and in [various] cities. Therefore, there is no sense in Mâlik's statement, unless he says that the [normative] practice of the people of Medina holds proof because they are the majority and reliability is with the opinion of the majority, which we have already undermined; or if he says that their agreement on an opinion or an action indicates that they depended upon an explicit, revealed authority. For the abrogating revelation came down among them. Therefore, the discernments of the *Sharî'a* cannot elude them. But this would be arbitrary, for it is not impossible that someone other than them heard a *hadîth* from the Messenger of Allâh, صلى الله عليه وسلم, on a journey or in Medina, but left [Medina] prior to its conveyance. Thus, the valid proof would lie in *ijmâ'* while there is no *ijmâ'*.

Many interpretations and excuses have been affected for

Mâlik, which we have exhausted in our book, *Tahdhîb al-Uṣûl*, and there is no need for them here. They may argue on the basis of the praise of Allâh's Messenger, صلى الله عليه وسلم, for Medina and its people, that this indicates their excellence and the abundance of their reward for living in Medina. But this does not indicate the designation of *ijmâ'* to them [only].

Some people say that proof lies in the unanimity of the four Caliphs. But this is arbitrary. There is no proof for this, except what a group has imagined, that is, that the statement of a Companion is a valid proof. This will come /1:188/ in its [proper] place.

VII. DISCUSSION: They [scholars] have disputed about whether it is conditional that the people of *ijmâ'* reach the number of *tawâtur*. As for those who rely on rational proof and the impossibility of error [for the *ummah*] by virtue of the nature of case, then it requires of them the condition [of *tawâtur*].

But those who take this [position] on the basis of revealed authority disagree. Some of them require this because even if their number is insufficient [for *tawâtur*], we do not know certainly their faith on the basis of their statements, let alone through other means.

This is corrupt from two aspects:

The first of them is that one knows their faith not by their statements but on the basis of *his* statement, صلى الله عليه وسلم, "A portion of my *ummah* will remain on the truth until the command of Allâh

[for the end of time] arrives and until the anti-Christ appears."[41] Therefore, if there are no Muslims on the face of the Earth besides them, they are, indeed, holding to truth.

Second, we were not charged to worship on the basis of the esoteric. However, the *ummah* of Mu<u>h</u>ammad are those who believe openly in Mu<u>h</u>ammad, صلى الله عليه وسلم, since there is no knowing the esoteric. If it is evident that we are charged to worship on the basis of following them, then it is possible to conclude by this that they are truthful. For Allâh, تعالى, has not charged us to follow, exalt, and emulate a liar.

If it is said: How is the reduction in the number of Muslims to what is short of the number of *tawâtur* conceivable? This leads to the discontinuance of obligation, for obligation lasts for the duration of the proof. The proof is founded upon a *tawâtur* report attested to by the miracles of prophethood, by the existence of Mu<u>h</u>ammad, صلى الله عليه وسلم, and his challenge [to the people] with prophethood. The unbelievers do not endorse the promulgation of the miracles of prophethood. Rather, they strive to obliterate them. But the preceding generations of *imâms* are unanimous on the perpetuity of obligation until the Day of Judgement. This implies that there is *ijmâ'* on the impossibility of the effacement of the miracles. But the deficiency of the number of *tawâtur* leads to effacement. If the existence of this eventuality is inconceivable,

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[41]For various references and versions of this text see Wensinck, *Concordance et Indices de la Tradition Musulmane*, 4:53.

how can we speculate about its status?

We shall say: It is possible to say this is inscrutable because of these proofs. But what is meant by the conceivability of this issue is the reduction of the numbers of the people of influence to less than the number of *tawâtur*. Even if we are decided that the opinion of the masses is not regarded, the signs of the *Sharî'a* endure through the *tawâtur* of the masses.

But it is possible to say that this eventuality is conceivable, and that Allâh, تعالى, will perpetuate these signs through *tawâtur*, which accrues on the part of Muslims and disbelievers—for they speak about the existence of Muhammad, صلى الله عليه وسلم, and the presence of his miracle, even if they do not acknowledge it as being a miracle. Or, Allâh, تعالى, will intervene in the ordinary. Thus, certain knowledge accrues based on the statement of fewer [than *tawâtur*] so that the valid proof continues. In fact, we say that [through] the statement of a few together with known circumstantial evidences, say of one's debates and his tendencies, certain knowledge can accrue without intervention in the ordinary. Therefore, on the basis of all these aspects, the *Sharî'a* can continue to be preserved.

If it is said: Since it is allowed for the number of the people of influence to be reduced, if it is reduced to one, then can his lone statement become a decisive proof?

We shall say: If we consider the conformity of the common people to what he says—and the masses support him and do not oppose him in it—then it is the *ijmâ'* of the *ummah*, and it becomes

a valid proof, since, if this were not so, the *ummah* will have agreed on a mistake and an error.

But if we do not acknowledge the opinion of the masses, then that through which materialized [the essence of] the terms *concurrence* and *ijmâ'* 'is not found, since it necessarily calls for a [certain] number so that it can be named *ijmâ'*—and not less than two or three. /1:189/ All this is conceivable in the view of one who regards *ijmâ'* from [those who came] after the Companions.

As for one who advocates only the *ijmâ'* of the Companions, he is obliged by none of this because the number of the Companions surely exceeded the number of *tawâtur*.

VIII. DISCUSSION: Dâwûd and his supporters, from the people of Ẕâhir, hold that there is no valid proof in the *ijmâ'* of those after the Companions. This is faulty, for the three proofs which evidence that *ijmâ'* is a valid proof—I mean the Book, the *Sunna*, and Reason—do not differentiate between one generation and another. For when the Successors concurred, then it was the *ijmâ'* of the whole *ummah*. Whosoever opposed them, followed other than the way of the faithful. It is impossible, in customary, normative behavior, that truth escape them while they were so numerous, according to those who consider customary, normative behavior [as a basis for argument].

But they have two doubts. The weaker of the two is their position to rely on a report and a verse—namely, His statement, تعالى, "*One who follows a path other than the path of the*

faithful"[42]—which treats those characterized by faith, that is, those who were present at the time the verse came down. For the non-existent cannot be credited with faith and for them there is no path. Also, his saying, عَلَيْهِ السَّلَام, "My *ummah* will not concur on a mistake," encompasses his *ummah*, those who believed in him and whose concensus or disagreement was conceivable; namely those present.

This is false, for from the drift [of their arguments] it follows necessarily that *ijmâ'* could not be concluded after the death of Sa'd b. Mu'âdh, H̲amza, and those martyred from among the Muhajirîn and the Ans̲âr, of those who existed when this verse was revealed. Thus, the *ijmâ'* of those after them is not the *ijmâ'* of all the believers and the totality of the *ummah*. In addition, it requires disregarding the dissent of those who became Muslims after the revelation of this verse, though their skill was perfected thereafter.

But our concurence, theirs, and the Companions is that the death of one of the Companions does not shut the door of *ijmâ'*. Rather, the *ijmâ'* of the Companions after the Prophet, صَلَّى الله عَلَيْهِ وَسَلَّم, is unanimously a valid proof. How many a Companion was martyred in the lifetime of the Messenger of Allâh, صَلَّى الله عَلَيْهِ وَسَلَّم, after the revelation of this verse!

The second doubt is that it is incumbent to follow the path of all the faithful and the *ijmâ'* of the entire *ummah*; but the Successors are not the whole *ummah*. For the Companions, even though they died, they were not, by their death, excluded from the

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[42]Qur'ân, 4:115.

ummah. Therefore, if one of the Companions were to oppose the *ijmâ'* of the Successors, it is not the position of the whole *ummah*, and it is not prohibited to accept the opinion of a Companion. So, if the dissent of some of the Comapanions repudiates the *ijmâ'* of the Successors, their [the Companions] non-agreement also repudiates this, for in their death they were not excluded from being part of the *ummah*.

They say: Argument by this analogy requires that the description *totality* also not be applied to the Companions. Rather, one should await the arrival of the Successors and their agreement with those after them until the Day of Ressurection, for they are *all* the *ummah*. But if this were to be considered, *ijmâ'* could not be enjoyed except on the Day of Judgment. Thus, it is established that the description *totality*, then, is only [applicable] on whosoever has come into existence to the exclusion of whosoever has not. Therefore, there is no way to exclude the Companions from the entirety [of the *ummah*]. Hence, the description *totality of the ummah* is not established for the Successors.

The answer is that just as it is decisively untenable to consider the succeeding generations, so is it untenable to consider the predecessors. But for this, *ijmâ'* would be inconceivable after the death of even one of the Muslims in the time of the Companions **/1:190/** or the Successors, or after Hamza was martyred. Yet they recognize the rectitude of the *ijmâ'* of the Companions after the Messenger of Allâh, صلى الله عليه وسلم, and after the death of those who died after the Messenger of Allâh, صلى الله عليه وسلم. This cannot be so except if the past is not regarded and the future is not awaited, and

that the description *totality of the* ummah, stems from all those existing in each period.

As for the *ijmâ'* of the Successors in opposition to a Companion's position, some people have said: The statement of the Companion is forsaken because they are the whole *ummah*.

If we concede this—and it is correct—we say, if they concurred in accordance with his opinion, *ijmâ'* would be constituted, since his agreement, if it does not confirm the *ijmâ'*, does not impair it. Yet even if they resolve to oppose his position, in our view this opinion will not be abandoned, to the extent that it is prohibited for the successors of the Successors to agree with it. For after he gave a legal opinion regarding the issue, the *fatwâ* of the Successors concerning it is not the *fatwâ* of the whole *ummah*. Rather, it is the *fatwâ* of a portion.

If it is said: If the qualifier *totality* is established for the Successors, then let dissent from their position after them be prohibited, even if a Companion held that [dissenting] opinion before them. And if they are not the whole of the *ummah*,then it is incumbent that the proof not be constituted by their *ijmâ'*; nor is opposing them prohibited, since dissent of a part of the *ummah* is not unlawful. However, when the totality of the *ummah* is in something to the exclusion of something else, then this is contradictory, holding together negation and affirmation.

We shall say: This has no contradiction because *totality* is established only in relation to the question which they have engaged. But when a question occurs after the Companions, then

the Successors are the entire *ummah* with respect to it, if they agreed upon it. As for a Companion who gave an authoritative opinion upon a question, his *fatwâ* and his view do not expire with his death. This is like [the case of] the Companion who dies after delivering a *fatwâ*, while those who remain concur in opposing him. This cannot constitute the *ijmâ'* of the *ummah*. But if he dies then an event occurs after him, then *ijmâ'* would have been effected according to all views, and the *totality* is attained in relation [to them].

If it is said: If a person of the *ummah* were to be absent, *ijmâ'* would not be constituted without him, even if the missing [individual] had no information thereof about the incident, nor an opinion concerning it. However, we say if he were present, he would have had an opinion regarding it. Thus, his agreement is necessary. Hence, the case of the dead before the Successors is like the [that of] the absent.

We shall say: This becomes void with the death of the first Companion, for *ijmâ'* has been concluded without him. If he were absent, it would not have been constituted because he who was absent at the time [of *ijmâ'*] posesses a view and an opinion inherently. Thus his assent or dissent is possible. So it is possible that he may agree or disagree if the question were presented to him, contrary to the dead; for in his case opposition or agreement is inconceivable potentialy or actualy. Yet [the opinion of] the insane, the sick of vanishing reason, and the minor, is not awaited because the possibility of concurrence and dissent on their part is

invalidated.

If it is said: So what the Successors agree on can be overturned by the dissent of one of the Companions if [his opinion] is transmitted. Even if it is not related, perhaps he did disagree. But it has not been reported to us. Therefore, the *ijmâ'* of the entire *ummah* cannot be ascertained.

We shall say: This is voided with the first dead of the Companions, for the potentiality of his opposition is not like the actuality of his dissent. This is the truth [of the matter]. It is so for were the door of possibility to be opened, then all arguments would become void, /1:191/ since there is no rule whatsoever but that its supposed abrogation is conceivable, as is its report by a solitary individual, whose death is possible prior to his conveying it to us. In addition, the *ijmâ'* of the Companions would be void because of the possibilty that one of them concealed his oppositon and only manifested his agreement for some reason. Also, a solitary report can be refuted for the possibility of it being false. Again, if the *ijmâ'* is known and the generation has passed, the reversal [of a position] on the part of one of them is possible before his death, although it may not have been related to us. Thus, *ijmâ'* would be void in the view of those who require the passing of the generation.

If it is said: The basic rule is that there is no abrogation and no reversion.

We shall say: The basic rule is the nonexistence of his involvment in the issue and the nonexistence of either his assent or

dissent. But while the basic rule is nonexistance, still, possibility is not negated. But when possibility is established, doubt accrues. So *ijmâ'* becomes unascertainable with doubt. However, it can be said that *ijmâ'* is not repudiated by every doubt.

If it is said: On the question of the possibility of abrogation and reversal, there is doubt after the ascertaining of the original argument. However, the doubt is in regard to its continuation. But here the doubt is in the basis of *ijmâ'*, for *ijmâ'* to them rests upon the accruance of the qualifier *totality*, and the description *totality* depends upon the knowledge of the absence of opposition. So, when we doubt the absence of opposition, we doubt the *totality*, and, thus, we doubt *ijmâ'*.

We shall say: No. Rather, the qualifier *totality* has accrued to the Successors. But it can be annulled only by knowing the opposition. Thus, if it is not known, totality remains. What they mention resembles the opinion of one who says that the proof is in the text. The Messenger, عَلَيْهِ السَّلَامُ, died before its abrogation. So if his death was not known before it was abrogated, we shall doubt this proof, and the proof is the *ijmâ'* upon which the generation has passed. So if we doubt the reversal [of a person's opinion], we doubt the proof. And such is the opinion on the position of the first dead of the Companions. Therefore, we do not acknowledge that the *totality* of the remaining [Companions] is doubtful.

This is the completion of discussion on the first constituent [of *ijmâ'*].

The Second Constituent: Ijmâ' Itself

We mean by this the unanimity of *fatwâs* of the *ummah* on a question in one matter—whether the generation has passed or not, whether they have given their *fatwâ* on the basis of *ijtihâd* or a text—as long as the *fatwâ* is an explicit articulation. The completion of the inquiry in this constituent is in elucidating that silence is not like utterance, that the passing of the generation is not a condition, and that *ijmâ'* can be constituted on the basis of *ijtihâd*. These, then, are three discussions.

I. DISCUSSION: When one of the Companions pronounces a *fatwâ* and the others keep silent, *ijmâ'* is not constituted, for opinion cannot be attributed to the silent.

Some people have said: If it is propagated and they remain silent, then their silence is like articulation, so that *ijmâ'* is fulfilled. Some people have required that the generation passes in silence [i.e. without dissent]. Others have said: It is a valid proof, but it is not *ijmâ'*. Still others have said: It is neither a proof nor *ijmâ'*; however, it is evidence of their sanctioning of *ijtihâd* on this question.

The choice [opinion] is that it is not an *ijmâ'*, nor a proof, nor evidence for sanctioning *ijtihâd* in this issue, unless circumstantial evidences indicate that they kept silent, concealing their consent, and [indicate] the permissibility of relying on this [position] in view of [their] silence. The proof for this is that [a Companion's] *fatwâ* is known only on the basis of his explicit statement, which /1:192/ is not open to ambiguity and uncertainty, while silence is irresolute,

for one may be silent without concealing assent due to seven reasons.

The **first** is that in his heart something prevents him from the expression of an opinion, while we do not perceive it. Indications of displeasure show on him despite his silence.

The **second** is that he is silent because he deems it a plausible opinion for a person whose *ijtihâd* leads him to such [a position], although he, himself, disagrees with it; in fact, he believes it to be an error.

The **third** is that one may believe that every *mujtahid* is correct. Thus, he does not consider contestation in cases of *ijtihâd* at all and views repudiation as a collective obligation only. Therefore, when a qualified [*mujtahid*], who is correct, [rules], he keeps silent, even though he differs with his *ijtihâd*.

The **fourth** is that he remains silent while he disapproves. But he awaits an opportunity for denial, for he does not believe it beneficial to hasten due to some impediment whose disappearance he awaits. Then he dies before this obstacle's cessation, or he becomes distracted from it.

The **fifth** is that he knows that if he differs, no one will pay attention to him and that he would be debased. It is like the statement of b. 'Abbâs about his silence concerning the denial of '*awl* during the lifetime of 'Umar, "He was an awe-inspiring man; so I feared him."

The **sixth** is that one keeps silent because he is undecided on the question, for he is still in the time of reflection.

The **seventh** is that he may remain silent because he

suspects that someone else requited him from the denial and dispensed with his declaration, but is mistaken in this. Thus, he abandons rejection under a delusion, since he views repudiation to be a collective obligation. So he thinks that he has been spared, while he is mistaken in his supposition.

If it is said: If there were disagreement in this, it would be evident.

We shall say: And if there were unanimity in this, it would be evident, [as well]. For if one can conceive of an obstacle which prevents manifestation of accordance, one can imagine its like in manifesting dispute. On this basis, the opinion of Jubbâ'î becomes false, since he makes the passing of the generation in silence a condition; for the impediments mentioned may not endure to the end of the generation.

As for those who hold that it is a valid proof—although it is not *ijmâ'*—this is arbitrary because it is the opinion of a portion of the *ummah*, while infallibility, rather, is established for the whole [*ummah*] alone.

If it said: We know conclusively that the Successors, when a question was difficult for them—and a widespread opinion of a Companion was conveyed to them, upon which the others [Companions] remained silent—did not permit renunciation of it. Therefore, it is *ijmâ'* on their part that it is a valid proof.

We shall say: This *ijmâ'* is not conceded. On the contrary, scholars are still divided on this issue; moreover, the astute know

that silence is indecisiveness and that the opinion of a portion of the *ummah* contains no valid proof.

II. DISCUSSION: When the opinion of the *ummah* is unanimous—even if it is momentary—*ijmâ'* is constituted, and its immunity from error necessarily [follows].

Some people have said that it is necessary for the generation to pass and for all [its people] to die. This is corrupt because the validity of the proof is in their agreement, not in their death. Moreover, it took place prior to their death. Thus, death does not increase its confirmation. The validity of *ijmâ'* is the verse [of the Qur'ân] and the report [of the Messenger], and they do not require consideration of the generation.

If it is said: So long as they remain alive, their retraction may be anticipated, and their *fatwâs* unsettled.

We shall say: The argument, then, is in their retraction, and we disallow retraction from all of them, since one of the two *ijmâ's* is wrong—and this is absurd. As for some of them, reversal is not permissible for them because in their reverting they oppose the *ijmâ'* of the *ummah*, whose immunity /1:193/ from error is necessarily established. Certainly it is possible that the retraction may occur from some of them, and thereby they become disobedient and unrighteous. However, disobedience is possible on the part of some of the *ummah*, but not all.

If it is said: How can one be controverting *ijmâ'*, while *ijmâ'*

is not completed? For it is completed only when the generation passes.

We shall say: If you mean by this that it is not called *ijmâ'*, this is a startling lie against language and norms. But if you mean that the reality of *ijmâ'* has not been realized, then what defines it? And what is *ijmâ'* except the accordance of their *fatwâs*, and that agreement has occurred? What comes thereafter is the continuation of conformity, not the completion of the agreement.

Also we say, how can one claim this, while we know that the Successors during the lifetime of Anis b. Mâlik and the later Companions used to argue on the basis of the *ijmâ'* of the Companions? But the possibility of argument on the basis of *ijmâ'* was not fixed to the death of the last of the Companions. Therefore, some of them have said that the death of the majority [of the generation] is sufficient—and this is another arbitrary, baseless [point]. Furthermore, we say that this leads to the impossibility of *ijmâ'*. For if there remains one of the Companions, it is possible for the Successor to contravene [the Companions], since the *ijmâ'* is not completed. And as long as one of the generation of the Successors remains, likewise, *ijmâ'* cannot be decided from them because it is possible for a successor of the Successors to dissent. This is baseless hallucination.

Yet they have doubts.

The first doubt is their statement: Perhaps some of them may have said what they said due to imagination and error, but then they realize it. So how can one be forbidden from /1:194/ retracting an error? And how can this be secured by an agreement

momentarily?

We shall say: If he should die, from where shall indemnity against his error be attained? And is there protection from error other than the text indicating the necessity of the infallibility of the *ummah?*

But if he retracts and says: I realize that I was mistaken.

We shall say: One may presume your error only when you stand alone. As for what you said in conformity with the *ummah*, it is not liable to error.

If he says: I have realized that I said what I said on the basis of such and such a proof. But its contrary has become manifest to me, decisively.

Then, we shall say: You have only erred in the method, not on the question itself. Rather, your agreement with the *ummah* is a proof that the judgment was correct, even if you were mistaken in your process of deduction.

The second doubt is that perhaps they issued [an opinion] based on *ijtihâd* and conjecture, and there is no hindrance on a *mujtahid* from retraction when his *ijtihâd* changes. Thus, if withdrawal is allowable, it indicates that the *ijmâ'* was not complete.

We shall say: There is no restriction on the *mujtahid* from reversing, if he stands alone in his *ijtihâd*. As for where his *ijtihâd* agrees with the *ijtihâd* of the *ummah*, then its error is not possible. It must be correct, and withdrawal from the truth is forbidden.

The third doubt is that if the opponent dies, the question, vis á vis his death, does not become *ijmâ'*. The survivors are the whole

ummah; however, they are in a phase of this generation. Therefore, the view of the opponent does not become abandoned. But if the generation were to be disregarded, then the opinion of the opponent would be annulled. /1:195/

We shall say: Some people have held that his view is voided and it becomes abandoned because the remaining are themselves the entire *ummah* at that time. But this is not correct, according to us. Rather, the correct [opinion] is that they are not the whole *ummah* in relation to this question, upon which the dead person had given his *fatwâ*, for the judgment of his *fatwâ* does not expire with his death. But this is not because of the generation. For it is possible for a sole Companion to hold an opinion, while the Successors, throughout their whole period, are unanimous in opposing it. For we have [already] clarified that this does not nullify his view because they are not the entire *ummah* in relation to this question.

The fourth doubt concerns what has been transmitted concerning 'Alî, رضي الله عنه, that he said:

> My opinion and the opinion of 'Umar conformed on prohibiting selling female slaves who have born [their master's] children. But I now think their sale [is lawful].

Then 'Ubayda al-Salmânî said, "Your opinion in the time of harmony is dearer to us than your view in the time of division."

We shall say: If the *ijmâ'* of all the Companions is correct, then this would not prove—on the basis of the opinion of 'Alî—that the passing of the generation is conditional; even if he held this

distinctly, it is not obligatory to follow him. How could it be so, while only his opinion and 'Umar's were in accord, as he said?

As for the statement of 'Ubayda, "your view in the time of harmony," he did not mean by this that conforming with the Community constituted *ijmâ'*; rather, he meant by this that your opinion in the time of harmony, union, unanimity, and obedience to the *Imâm*, is dearer to us than your opinion in the time of sedition, division, and dissension, while accusation may reach 'Alî /1:196/ of disavowal of the two *Shaykhs*,[43] رَضِيَ الله عنهم. Thus, there is no proof in what is not explicit in itself.

III. DISCUSSION: It is conceivable that *ijmâ'* be concluded on the basis of *ijtihâd* and *qiyâs*, and it becomes a valid proof.

Some people have said: The agreement of a large number of people is not conceivable in a place of conjecture. But if it were conceivable it would be a valid proof. Ibn Jarîr al-Ṯabarî holds this [opinion]. And others have said: It is conceivable, but it is not a valid proof, for advocating *ijtihâd* opens [further] the gate of *ijtihâd*, instead of prohibiting it. But the choice [opinion] is that it is conceivable and it is a valid proof.

And [as for] their statement: How will a large number of people be consistent on one judgment in a question of conjecture?

We shall say: This is only denied where possibilities are equiponderant. As for the more likely conjecture, each one may be inclined to it. So what improbability is there that all of them may

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[43]This, of course, refers to Abû Bakr and 'Umar.

agree that *nabîdh* is in the category of alcohol with respect to intoxication? Thus, it is like it in being prohibited. Why should it not be so! while most of the *ijmâ's* depend upon generalities, perceptibles, and solitary reports which are correct according to the *muhaddiths*, while these [things] are liable to [other interpretations]. Again, why should it not be so! when they [people] have consensus on the unicity [of Allâh] and prophethood, while in both is mystery, which is of greater attraction for many people than possible interpretations as opposed to [these] more evident interpretations. Furthermore, many false ideologies have agreed upon the falsity of prophethood, although they have no proof, decisive or conjectural. So why is agreement not allowable based on obvious evidence and preponderating probability?

Evidence for this is the possibility /1:197/ of agreement by way of *ijtihâd*, not by the method of *qiyâs*, similar to assent on the requital for hunting [in *ihrâm*], the amount of a [crime's] fine, the assessment of [a wife's] support, and the credibility of the *imâms* and judges. All these are conjectural, even though there is no *qiyâs* [applicable].

But they have doubts.

The first is their statement: How will the *ummah* agree in spite of the diversity of their natures, and the difference in their understandings, intelligences, and stupidities regarding the conjectural?

We shall say: This kind of agreement is prevented at one time and in one specific moment because during the time of reflection they may disagree. But over extended periods of time, it

is not unlikely that the intelligent ones will proceed to the evident proofs and that they will establish this for the dull. So they accept it from them and corroborate it. Now, the people of this view have permitted *ijmâ'* on the basis of the negation of *qiyâs* and its invalidation, while the proofs of its rectitude are manifest. So how can *ijmâ'* be prevented by this?

The second doubt is their statement: How can the *ummah* concur on *qiyâs*, while the principle of *qiyâs* is disputed.

We shall say: It is only supposed that this is on the part of the Companions, while they were unanimous on it, and disagreement occurred after them.

If it is presupposed that it happened after the emergence of dispute, then those who endorse *qiyâs* may depend on *qiyâs*, while those who reject it may depend on *ijtihâd*—which they think is not *qiyâs*, while in reality it is *qiyâs*. For one may be deluded that the non-general is a generality, that the non-command is an imperative, and that the non-*qiyâs* is *qiyâs*—and vice-versa. /1:198/

The third doubt is their statement that error in *ijtihâd* is possible. So how can the *ummah* agree on what has a possibility of error in it? Moreover, they may say that *ijmâ'* is constituted on the permissibility of opposing a *mujtahid*. Therefore, if *ijmâ'* was concluded on the basis of *qiyâs*, its opposition would be rendered unlawful—which is, by *ijmâ'*, permissible. Thus, the two *ijmâ's* would be contradictory.

We shall say: Error is possible only in *ijtihâd* that is held by lone individuals. As for the *ijtihâd* of the infallible *ummah*, it is not liable to error, like the *ijtihâd* of Allâh's Messenger, صلى الله عليه وسلم ,

and his *qiyâs*. For his contravention is not permitted since immunity from error is established. And such is the case with the infallibility of the *ummah*, without any difference.

CHAPTER THREE: THE STATUS OF *IJMA'*

[*Ijmâ's'*] status necessitates adherence, prohibition of dissension, and refraining from all that accuses the *ummah* of neglecting the truth. The examination of that which is a breech and a violation [of *Ijmâ'*] and that which is not a contravention may be refined by outlining a few discussions.

I. DISCUSSION: If the *ummah* concurs upon two opinions concerning a question—as in their ruling regarding, for example, the purchase /1:199/ of a handmaiden whose [buyer] has sexual intercourse with her and discovers a defect. Some hold that she should be returned with *'uqr*,[44] while others prohibit return. But if they consented to both of these positions, then the result of the return [of the slave girl] without payment would be a breech of the *ijmâ'*, according to the vast majority [of jurists], save some eccentric characters from among the Ẕâhirites. But then, al-Shâfi'î held that the slave girl could be returned without compensation because the Companions as a whole did not treat this issue. The opinions of

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[44] *'Uqr* is financial compensation given by a sane male of legal age for mistakenly having sexual intercourse with a free or slave woman provided that his act is not legally recognized as adultery. See al-Jurjânî, *Ta'rifât*, p. 158, and Qal'ajî, *Mu'jam Lughat al-Fuqahâ'*.

only some of them have been related. Yet if an overwhelming number of them did engage in this and if all together were resolved on the two views, then the issuance of a third opinion would not be permitted. The proof for this is that this would necessitate accusing the *ummah* of neglecting the truth, since the third view must have a proof, and it requires accusing the *ummah* of being heedless and neglectful of it—which is absurd.

Still, they have [several] doubts.

The first doubt is their statement: They [the Companions] took up the discussion as *mujtahids* and did not articulate the prohibition of a third position.

We shall say: If they agreed on one opinion on the basis of *ijtihâd*, then this is acceptable. And it would not be permissible to oppose them because it necessitates accusing them of negligence of the truth and ignorance of its proof—and so it is the case here.

The second doubt is their statement: If the Companions argued on the basis of a *proof* or an *underlying reason*, it would be permissible then to argue on the basis of another *underlying reason* because they did not explicitly specify its falsity. And such is the case with the third opinion. They did not explicitly regard it as false.

We shall say: Thus, let disagreement with them be permissible when they agree on the basis of *ijtihâd*, since it is possible to reason /1:200/ by another *underlying reason* in what they are agreed upon. But the answer is that familiarity with all

evidences is not an obligation of their religion. Rather, the knowledge of truth suffices them on the basis of one proof. Therefore, issuing and extracting another underlying reason is not an accusation of neglecting the truth. But opposition to their rule—if they [the Companions] agree—is an accusation of neglecting the truth. Such is the case when they come to two opinions.

The **third doubt** is that some of the Companions hold that touching or feeling [a female] void ablution and others opine that they do not annul ablution, without distinguishing between the two of them. So if a Successor were to hold that one of the two nullifies [ablution] without the other, this would be permissible, even though it is a third opinion.

We shall say: This is because his position in each question confirms a certain position of one group. But the two questions do not have one answer, nor is equiponderance intended. Even if it were intended and they held that there is no difference and they concurred upon this, distinction would not be permitted.

However, if they distinguished between the two questions and agreed upon the distinction, intentionally, then both of them would be refused. But since they did not combine, nor distinguish between them, one ruling, therefore, does not emerge from these two questions. Rather, I say explicitly that no human is free from disobedience or error on a question. And the Community is unanimous on the occurrence of disobedience and error.

None of this is impossible. Error is only impossible when it results in neglecting the truth, to the extent that it is held by no

group, despite his [the Prophet's] statement, عَلَيْهِ السَّلَامُ, "A group from among my Community will continue abiding by /1:201/ the truth." Because of this, we say that it is possible for the *ummah* to be divided into two groups on two issues. But one group would be mistaken in a question, while the other group would hold to the truth concerning it. But those who hold to truth may error concerning another question, whose truth will be held by those erring in the first question, such that part of the *ummah* may say, for example, that *qiyâs* is not a valid proof and that the Khârajites are false, while the other part says that *qiyâs* is a valid proof and that the Khârajites are correct. So, error applies to both groups, but in two different aspects. Therefore, the truth on both of these matters will not be abandoned among the *ummah* in either case.

The **fourth** doubt: Masrûq[45] issued a third opinion on the question of *harâm*[46] while no one objected to him.

We shall say: The firmness of the entirety of the Companions on two opinions on this issue has not been established. Rather, some of them, may have been reflecting upon it or were not engage

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[45]Masrûq b. al-Ajda' (d. 63 H.), a prominent Successor whose name, "the stolen one," came from his being kidnapped as a child. He was a Kufan *muhaddith* and *faqîh*. See al-Mizzî, *Tahdhîb al-Kamâl*, 3:1320-21; b. Hajar, *Tahdhîb al-Tahdhîb*, 10:110; and Dhahabî, *Siyar 'Alâm al-Nubalâ'*, 4:63-69.

[46]Ghazâlî is most likely refering to Masrûq's position on *nadhr* (swearing to kill a son for not fulfilling a committment), which is *harâm*. Masrûq holds that such an oath must be atoned for. See al-Râzî, *al-Mahsûl*, 1:252.

in it; or perhaps Masrûq differed with the Companions at that time and did not voice his agreement with them. For he was capable of *ijtihâd* at the time this issue occurred. /1:202/ How could this be, while this [report] from Masrûq has not been proved correct except through solitary reports. Therefore, it cannot repudiate what we have mentioned.

II. DISCUSSION: If one or two from the *ummah* dissent, then *ijmâ'* is not constituted without them. And if [they] die, still *ijmâ'*, on this question, is not constituted, contrary to [the opinion of] others. And our proof is that what is forbidden is opposition to the entire *ummah*. But he who assumes the opinion of the dead person after his time, then it cannot be said that his opinion is against the entire *ummah* because the opinion of a dead person from among the *ummah* does not cease with his death. For this reason, it is said that so and so agrees with al-Shâfi'î or disagrees with him. This is after the death of al-Shâfi'î. Thus the opinion of the dead person does not become abandoned with his death. If it were to be abandoned, then an opinion of an entire generation would be as if it were annulled after their death, to the extent that it would be permissible for those who come after them to disagree with them.

If it is said: If one should die during the time of inquiry, while abstaining from judgment, what do you say, then, with regard to him?

We shall say: We are decided on two clear ends: One of

them is that if he dies before treating the question or even before it is posed to him, then those who remain after him are the whole *ummah*. But if he did treat the question /1:203/ and issued his *fatwâ*, then the remaining are only *part* of the *ummah*. But if he dies while in the process of considering it, this is liable to [different] interpretations. For this person has neither disagreed nor agreed with them. Rather, a person who is undecided is in disagreement with a person who is decided. But he is in the process of coming into agreement. And this question, in our view, is liable to [different] interpretations. And Allâh knows best.

III. DISCUSSION: If the Successors are in agreement on one of the opinions held by the Companions, the other opinion does not become abandoned. Nor is one who holds that opinion charged with violating *Ijmâ'*, contrary to what al-Karkhî says of a group from among the followers of Abû Hanîfah, those of al-Shâfi'î, and many of the Mu'tazilites, such as al-Jubbâ'î and his son.[47] For he is not opposing the whole *ummah* because those who died adhering to that opinion are from the *ummah*. And the Successors, concerning this question, are part of the *ummah*, as well. Even though they were the whole *ummah*, their position to choose one of the two opinions [of the Companions] does not, therefore, prohibit the other opinion. But if they [the Successors] explicitly forbid the other

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[47] Abû Hâshim 'Abd al-Salâm b. Muhammad al-Jubbâ'î (d. 321 H.), a famous Mu'tazilite, was, for some time, the teacher of Abû al-Hasan al-Ash'arî. For more on him, see the work of his student 'Abd al-Jabbâr, *Firaq wa Tabaqât al-Mu'tazila*, pp. 100-104.

opinion, we are then left with two alternatives: Either we say that the existence of this [prohibition] is impossible because it leads to contradictions between the two *ijmâ's*, since the generation of the Companions passed, explicitly permitting difference of opinion, /1:204/ while they [the Successors] agreed on prohibiting what the [Companions] have allowed; or we may say that this is possible but they constitute only part of the *ummah* regarding this question, and disobedience of a portion of the *ummah* is possible, even though they constitute the entirety of the *ummah* on all questions which the Companions did not treat. But this contradicts his statement, صلى الله عليه وسلم, "A group from among my *ummah* will continue openly abiding by truth," since the truth about this would be [considered] lost at this time. Then perhaps one who is inclined to this view may consider this *hadîth* as a solitary report.

If it is said: On what basis do you object to those who say that this is an *ijmâ'* which must be followed, while, as for the Companions, they agreed upon two opinions, on the condition that after them no one discovers a proof which corroborates the truth of one of the two.

We shall say: This is arbitrary and a fabrication against them because they did not require this condition, for *Ijmâ'* is a decisive, valid proof. Therefore, it is not possible for there to be a condition in the case of a decisive proof, since doubt may enter it, and thus it would cease to be decisive. But if this were possible, then it would be possible to say that if they were agreed on one opinion on the basis of /1:205/ *ijtihâd*, then they would agree on the condition that

no one after them discovers a proof which corroborates the truth concerning one's opposition. But the [generation of the] Companions passed agreeing to permit each of the two views. Therefore, it is not permitted to violate their *ijmâ'*.

IV. DISCUSSION: If the [consensus] of the *ummah* is on two different opinions, but then adheres to one position, what they now agreed upon becomes a decisive *ijmâ'*, according to those who require the termination of the generation. They, thus, escape the controversy.

As for us, since we do not make this a condition, the first *ijmâ'*, even though it was momentary, was completed allowing difference of opinion. So if they resort to one of the two opinions, then it is not possible for us, in that case, to say that they are [only] part of the *ummah* in this issue, as we have said concerning the unanimity of the Successors on one of the opinions of the Companions. Therefore, the controversy intensifies. This can be resolved in five ways:

The first is that we say the occurrence of this is impossible. It is like supposing their *ijmâ'* upon something, then all of them reverse their opinion to a different one, or in the unanimity of the Successors to oppose it. Now, those who require the passing of the generation, /1:206/ take this point as their basis.

They say: If, for example, they disagree on the question of marriage without a guardian, it is possible then to insist on [the opinion] of he who regards it as false. So why is not permissible for others to agree with him whenever the proof of falsity becomes

evident to them? How can a *mujtahid* be restricted from agreeing with his opponents if his opinion changes?

We shall say: This is clearly farfetched, and we disallow it because it would lead to contradictory *ijma's*, since the first *ijmâ'* indicated the permissibility of the difference [of opinion] and the necessity for all common people to follow whosoever they will from among the *mujtahids*. But unanimity on permitting this is not possible without decisive proof or near-decisive [proof] for allowing it. So how can its removal be conceived, while the impossibility of the occurrence of this contradiction between the *ijmâ's* is closer to arbitrariness than requiring the passing of the generation.

Then there remains the controversy regarding the unanimity of the Successors after the passing of the first generation [acknowledging] different views. Thereupon there is no dispute that it is permissible to resort to one of them in definitive issues /1:207/—such as their [the Companions'] resorting to fighting those who withheld *zakât* after disagreement about it, or that the *imâms* are to be from Quraysh [after originally disagreeing]. For each party faults its opponent and does not acknowledge its opinion, unlike issues liable to *ijtihâd*, where differing in them is coupled with the permissibility of difference of opinion and the justification of adhering to any position resulting from the *ijtihâd* of the two parties.

The **second** escape is to require the passing of the generation. But this is controversial because rendering this a condition is arbitrary.

The **third** escape is to stipulate that *ijmâ'* be based solely

upon something decisive, not on *qiyâs* nor *ijtihâd*, for those who require this say that their [the Companions'] differences do not impart consensus on the permissibility of all opinions. In fact, this also rests on *ijtihâd*. So if they resort to an opinion, then what must be considered is that upon which they have agreed, for truth is conclusively determined in one of the two opinions. But this is controversial because if this door were to be opened, there would be no relying on *ijmâ'*, since it is conceivable with every *ijmâ'* that it may be based on *ijtihâd*.

So were *ijmâ'* to be divided into that which is a valid proof and that which is not a valid proof, /1:208/ with no distinction—[thus] annulling adherence to it—then it would cease being a valid proof. For if the decisive proof, which is their basis, becomes evident to us, then this ruling would be solely dependent on this decisive [evidence] and founded on it, not on *ijmâ'*. For his statement, عَلَيْهِ السَّلَامُ, "My *ummah* shall not agree on error," did not distinguish between one kind of *ijmâ'* and another. There is no escape from this [argument], except for those who deny conceiving *ijmâ'* on the basis of *ijtihâd*. And in that case, the conclusion of their statements contradicts their premises, in view of their statement that the unanimity of [the Companions'] acknowledging difference of opinion is based on *ijtihâd*.

The **fourth** escape is to say that the last agreement should be considered. As for the earlier one, difference of opinion is only permitted on the condition that *ijmâ'* is not constituted on determining the truth to be in an opinion.

But this is controversial because this adds another condition

to *ijmâ'*. Yet decisive valid proofs cannot accept a condition for which it is possible to occur /1:209/ or not to occur. If this were possible, it would be possible to say that the second *ijmâ'* is not a valid proof. Rather, it can become a valid proof only on the condition that it not be an agreement [that arrives] after difference of opinion. And this is worthier because it severs possible conditions from the *ijmâ'* .

The fifth escape is [to say] that the last [opinion] is not a valid argument and that the abandoned opinion is not prohibited because *ijmâ'* only becomes a valid proof with the condition that it not be preceded by dispute. But if it is preceded, it cannot become a valid proof. But this is also controversial because his statement, عَلَيْهِ السَّلَام, "My *ummah* shall not agree on error," cuts off conditions entirely and it necessitates that every *ijmâ'* be a valid proof regardless of how it came to be. Therefore, each one of the two *ijmâ's* will be a valid proof. But this is contradictory.

Perhaps the most appropriate is the first approach, namely that this is inconceivable because it leads to contradiction. Its conception is like conceiving that the people of *ijmâ'* have all withdrawn from what they have agreed upon /1:210/ or like conceiving that the Successors have agreed in opposition to the *ijmâ'* of the Companions. Now the occurrence of this is impossible on the basis of revelation. Therefore, such is the case with this.

If it is said: The whole of the community of the Companions upheld *'awl*, except b. 'Abbâs, and [upheld] the prohibition of the sale of female slaves who have born children to their masters,

except 'Alî. So, if a proof appears to these two on *'awl* or on the prohibition of the sale, why, then, is it unlawful for them to return to agreement with the rest of the *ummah*? How can it be impossible that what became evident to them has not become evident to the *ummah*? Indeed, your opinion leads to this impossibility if you follow the first approach?

We shall say: There is no controversy in the first approach other than this. And the way to settle it is to say that withdrawing is not forbidden for them when a reason for it becomes evident to them. But we say that it is impossible for a reason to appear to them or for them to dissent, not because it is impossible per se, but because it leads to what is prohibited by revealed authority. Now something can become impossible per se or because of something else, such as the agreement of the Successors on voiding *qiyâs* and solitary report. For this is impossible not per se but because it leads to accusing the Companions of error, or faulting all of the Successors. And this is impossible on the basis of revealed authority. And Allâh knows best.

V. DISCUSSION: If someone says: If the Companions agreed upon a rule, but one of them remembers a *ḥadîth* contradicting it and transmits it, then if they resort to it, the first *ijmâ'* would be false—where their persistence in opposing the report is impossible, particularly on the part of the one who remembers it certainly. Now, if he retracts, he would be dissenting from the *ijmâ'*. But if he does not retract, he would be opposing the report. Now, there is no escape from this except through

acknowledging the passing of the generation. This should be given consderation.

We shall say: There are two ways out of this. **One** of them is that this is an impossible supposition, for Allâh protects the *ummah* from a consensus which contradicts a *hadîth* or He protects /1:212/ the transmitter from forgetfulness until *ijmâ'* has been completed.

The **second** is that we should examine the people of *ijmâ'*. If they are insistent, then it is sure that it [the *ijmâ'*] is correct; and, as for the *hadîth*, either the transmitter has made a mistake concerning it, such that he heard it from someone other than the Messenger of Allâh, صلى الله عليه وسلم, but thought that he heard it from the Messenger of Allâh, صلى الله عليه وسلم , or it was subject to abrogation but the narrator did not hear it while the people of *ijmâ'* knew it. But if this is not clear to us, [and] then if the narrator retracts, he is in error because he is opposing the *ijmâ'* while it is a decisive, valid proof.

But if the people of *ijmâ'* return to the *hadîth*, we shall say that what they agreed upon was correct at that time because Allâh has not obligated them [by the report], so long as it did not reach them, just as an abrogated rule is valid before the arrival of the abrogation, or as if an *ijtihâd* [postion] changes. Or, it could be that each one of the two opinions was correct according to the view of those who hold the opinion of every *mujtahid* as correct .

If it is said: If this is permissible, then why is it not /1:213/ permissible to say that if the entire community agreed on the basis of *ijtihâd*, it would be permissible for those after them to disagree

[with their *ijmâ'*]? Indeed, it is permissible for them to revoke [that *ijmâ'*] because what they have opined is correct so long as that *ijtihâd* is valid. But if it changes, then the supposition changes as well. All [of this] is correct, particularly when they disagree based on *ijtihâd* and then return to one opinion. Should you not say that this is permissible in order to express their opinion as long as it preponderates in their thinking? For they used to permit those who denied *'awl* and the sale of a female slave who has born her master's child. But when their minds change their obligation changes. Thus, what has been allowed for them becomes prohibited. But this does not constitute the removal of *ijmâ'*. Rather, it is permission to have recourse to an opinion on the condition that it preponderates in one's mind. But if one's mind changes, it no longer remains permissible (also, this becomes a sixth solution for the discussion prior to this issue).

We shall say: [As for] what they agreed upon by way of *ijtihâd*, it is not permissible to dispute it thereafter, not only because it is true, but because it is the truth upon which the *ummah* has concurred. /1:214/ Certainly, the *ummah* has agreed that whatever the *ummah* assents to is prohibited to contravene, unlike correct [positions] held by individuals.

As for when they differ on the basis of *ijtihâd*, they have agreed on the permissibility of the second opinion. Thus the permission to have recourse to it becomes a matter of agreement. But it is not permissible to stipulate the condition of the continuation of *ijtihâd*, as if they agreed on one statement on the basis of *ijtihâd*. Now in this, it cannot be stipulated that *ijtihâd* will

not change. Rather, contravention is made unlawful absolutely without any condition. So it is with this [case].

If it is said: What if that report becomes known to the Successors in contradistinction to what the Companions have agreed upon, and the person narrating it to them was present at the *ijmâ'* of the people of influence, but the narrator was not from among them?

We shall say: It is prohibited for the Successors to agree with him, and it is incumbent for him to follow the decisive *ijmâ'* because a solitary report is liable to /1:215/ abrogation or [is liable] to be forgotten, while *ijmâ'* is not liable to this.

VI. DISCUSSION: *Ijmâ'* cannot be established by a solitary report, contrary to what some of the *fuqahâ'* hold. The underlying reason for this is that *ijmâ'* is a decisive proof by which judgement is made [in interpreting] the Book of Allâh and the *mutawâtir Sunna*, while a solitary report is not decisive. So how can a decisive proof be based on it when it is not rationally impossible to fulfill religious obligations on its basis, provided it occurs [in religion], just as we have mentioned concerning the abrogation of the Qur'ân by a solitary report, although it has not taken place?

If it is said: So let the obligatoriness of acting on its basis be established if acting in accordance with it is not in opposition to the Book nor the *mutawâtir Sunna*, since *Ijmâ'* is like a text with regard to the obligatoriness of action; and acting on the basis of what a

reporter transmits of the text is incumbent, even if it is not held as decisive due to the rectitude of the text. And so it is in the case of *ijmâ'*.

We shall say: Acting on the basis of solitary reports has been established only on the precedence of the Companions and their *ijmâ'* upon it, concerning that which has been reported from the Messenger of Allâh, صلى الله عليه وسلم. /1:216/

As for what has been reported from the *ummah* by way of agreement or *ijmâ'*, no report or *ijmâ'* has been established by [text]. But if we were to establish it, this would be on the basis of *qiyâs*. Yet the rectitude of *qiyâs* has not been established for us concerning the establishment of the fundamental principles of the *Sharî'a*. This is the most likely [position]. But we do not decisively hold as false the view of one who adheres to it, particularly with regard to acting [based on it]. And Allâh knows best.

VII. DISCUSSION: To adopt the least *common factor* of what has been held is not the same as adhering to *Ijmâ'*, contrary to what some of the *fuqahâ'* hold. An example of this is that people disagree concerning the blood money of a Jew. Thus, it has been said that it is the same as the blood money of a Muslim. It has also been said that it is half. Again, it is has been said that it is a third. So, al-Shâfi'î adopted [the view] of one-third, which was the least. Thus, speculators presumed that he [al-Shâfi'î] adhered to this on the basis of *ijmâ'*. But this is thinking ill of al-Shâfi'î, رحمه الله because what is agreed upon is that this amount is obligatory. So there is no dispute concerning this.

But what is subject to dispute concerns the waiving of what is greater [than one-third]. Furthermore, there is no *ijmâ'* on this. On the contrary, if the *ijmâ'* on the obligatoriness of one-third were to be regarded as *ijmâ'* on the waiving of the excess, then the person who obligates the greater would be violating the *ijmâ'*. Moreover, his opinion would be decisively false.

But al-Shâfi'î regarded as obligatory that which was agreed upon. He then investigated the approaches of the proofs. But no proof was correct to him which obligated greater [than one-third]. So, he returned to *istiṣḥâb*, a stage in *barâ'at al-aṣlîya* [the original state of non-obligation], which has reason as its proof. Therefore, al-Shâfi'î adhered to *istiṣḥâb* and rational proof—the meaning of which will come later, Allâh, تعالى, willing—not the proof of *Ijmâ'*.

This is the completion of the discourse concerning *Ijmâ'*, which is the Third Principle.

THE FOURTH PRINCIPLE

RATIONAL PROOF AND ISTIṢḤĀB

Know that the revealed rules are not ascertainable through reason. But reason establishes one's exoneration from /1:218/ obligation, and the omission of restriction from man in all his doings prior to the raising of the messengers, عَلَيْهِم السَّلَام, who are supported with miracles.

The nonexistence of rules before the arrival of revealed authority is known through rational proof. We assume this [state] until the revelation arrives. Thus, when a prophet comes and obliges five prayers, a sixth prayer remains unobliged—not because the prophet has declared its negation, but because its obligatoriness has been [already] negated since nothing has established its mandatoriness. Accordingly, it remains in its original state of negation because his [the prophet's] pronouncement of obligation is restricted to the five [prayers]. So, negation continues with respect to the [obligation of the] sixth [prayer], as though revealed authority never came.

Similarly, when he makes the fasting of *Ramaḏân* obligatory, the fasting of the month of *Shawwâl* remains in the original state of negation. If he obliges an act of worship at a [specific] time, then after the passage of that time one remains in the original state of

freedom. Also, when he lays an obligation on an able person, /1:219/ a disabled person remains as he was [i.e., unobliged].

Therefore, an examination of the [*Sharî'a*] rules concerns either their establishment or negation. As for their establishment, reason is incapable of demonstrating them. Regarding their negation, however, reason has [already] indicated them, until a revealed proof comes with an expression changing them from their original state of negation. Therefore, [reason] stands as a proof for one of the two aspects, namely negation.

If it is said: If reason is a proof [but] on the condition that revealed authority does not come, then after the raising of the messengers and the establishment of the *Sharî'a* the negation of the revealed proof cannot be certain. Therefore, the negation of rules cannot be certain. So the ultimate point of your [argument] is the lack of knowledge of the arrival of revealed authority, while not knowing cannot be a valid proof.

We shall say: The nonexistence of revealed proof is either known certainly or conjectured, for we know certainly that there is no proof for the obligatoriness of fasting *Shawwâl*, nor for the obligatoriness of a sixth prayer, since we know that if they existed, they would have been transmitted and promulgated, and they would not have been hidden from the entire *ummah*. This is knowing the lack of proof, /1:220/ not lacking knowledge of the proof, since a lack of knowledge of proof is not a valid argument. But knowledge of the nonexistence of proof is valid.

As for conjecture, when a *mujtahid* investigates the avenues

of proof concerning the obligatoriness of *witr* [prayer], sacrifice, and their likes, and finds them weak and proof does not become evident to him—in spite of his thorough investigation and preoccupation with research—then the lack of proof preponderates in his mind. Therefore, he gives this the same status as certain knowledge with respect to action because it is conjecture based upon investigation and *ijtihâd*—which is the extent of a *mujtahid's* obligation.

If it is said: Why is it impossible for it [*witr*, for example] to be obligatory while there is no proof for it or that its proof has not yet reached us?

We shall say: As for making obligatory that which it has no proof, it is impossible because it is the laying of an unbearable obligation. It is for this reason that we negated all rules before the arrival of revealed authority.

As for that whose proof has not reached us, this is not valid proof in our view, since there is no obligation upon us except for that which has been conveyed to us.

If it is said: /1:221/ Then every common person will be able to deny [obligation] arguing that proof had not reached him.

We shall say: This is possible only for an investigating *mujtahid*, who studies the approaches of proof and is capable of thorough examination, as [for example] one is able to move about in his house seeking a piece of furniture; when he searches for it exhaustively, it is possible for him to decisively [conclude] the

negation of the furniture's [existence]. Or he may claim that his impressions [of its nonexistence] are overwhelming. As for a blind person who does not know the house and cannot see what is in it, it is not for him to claim that the furniture does not exist in the house.

If it is said: Does *istiṣḥâb* have any meaning other than what you have mentioned?

We shall say: *Istiṣḥab* is used in four ways. Three of them are correct:

The **first** is what we have mentioned.

The **second** [usage] is the continuation of an unspecified [case] until [the *Sharî'a*] specification arrives, or the continuation of a [*Sharî'a*] text until an abrogation arrives.

As for the unspecified [case], this is a valid proof for those who acknowledge it. As for the text, this is proof for the continuation of a rule on the condition that no abrogation arrives, /1:222/ just as reason has indicated that the original state of freedom [continues] on the condition that a revelation changing it does not come.

The **third** [usage] is affirmation [*istiṣḥab*] of a rule which the *Sharî'a* indicates both its establishment and its continuation, such as possession when the contract of ownership is in effect, or the liability of one [under obligation] when damage or liability occurs. For this—although not an original rule—is a *Sharî'a* rule for which the *Sharî'a* demonstrates both its establishment and continuation. Were it not for the evidence of the *Sharî'a* concerning its

continuation until freedom from responsibility occurs, *istiṣḥâb* would not be permissible. Therefore, it is not a valid proof except for that which a [*Sharî'a*] proof has indicated its establishment and continuation—on the condition that there is nothing to change it—as reason indicates its original state of freedom; revelation, [its] liability; or the *Sharî'a*, [its] ownership.

Also from among this sort is the principle requiring the renewal of necessity and obligatoriness [of acts] when their causes recur—like the recurrence of the month of *Ramaḍân*, the recurrence of the times of prayers, and supporting near relatives when their needs /1:223/ recur.

[This is so] provided that the appearance of these signs is understood as a cause based on *Sharî'a* proof for these rules, either by the general implications [of the Sharî'a address], which is in accordance to those who acknowledge it, or on the basis of [both] their general implications and a number of circumstantial evidences, according to all. These circumstantial evidences are restatements, corroborations, and signs for the bearers of the *Sharî'a* who know that the intent of the Lawgiver is to raise them as causes, provided that they are not prevented by obstacles.

So, were it not for the proof acknowledging them as causes, [applying] *istishâb* [on them] would not be permissible. Therefore, *istiṣḥâb* is an expression of adhering to a rational or *Sharî'a* proof. It is not attributed to the lack of knowledge of proof. Rather, it is [adhering to] a proof with the knowledge of the absence of its modifier or with the assumption, upon the exertion of effort in research and investigation, that the modifier does not exist.

The **fourth** is *istis̲h̲âbu'l-ijmâ'* [applying the the rule of *ijmâ'*] on points of dispute. But this is not correct. So we shall compose two discussions, [one] for this and [one for] a denier's need for proof.

I. DISCUSSION: /1:224/ There is no validity for *istis̲h̲âbu' l-ijmâ'* when there is a difference of opinion, contrary to [the views of] some of the *fuqahâ'*. An example of this is when a *mutayyammim*,[1] sees water during [his] prayer. [It is said that] he should continue his prayer because consensus is constituted on the rectitude of his prayer and its continuance. Therefore, the coincidental occurrence of the existence of water is just like the occurrence of the blowing of the winds, the coming of the dawn, and other events. Therefore, *istis̲h̲âb* will be applied concerning the continuation of prayer *until* a proof establishes that seeing the water definitely breaks the prayer.

But this is corrupt because he who applies *istis̲h̲āb* is either admitting that he did not establish a proof for the issue saying, "I am denying [this], and proof is not required for a denier," or thinking that he has furnished proof. So if he admits to not furnishing a proof, we shall explain the necessity for furnishing a proof on the part of a denier. But if he thinks he has furnished a

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[1] A person who performs *tayammum*, which is a substitute, in the absence of water or in special circumstances, for ritual ablution before prayer. For details see *The Shorter Encyclopaedia of Islam*, 1953 ed., s.v. "Tayammum"; and Zah̲îlî, *al-Fiqh al-Islâmî wa Adillatuhu*, 1:406.

proof, he has erred, and we say that only a rule for which a proof has established its continuance can remain [standing]. /1:225/

So the proof for the continuance of the prayer in this case is either the statement of the Lawgiver or *Ijmâ'*. But if it is a statement, it is necessary to have an explication for this statement. For it may indicate its [the prayer's] continuance in the absence [of water], but not in [its] presence. So if it indicates by its generic case [*'umûm*] its continuance in both the absence and presence [of water], this would be adherence to the generic case, according to those who acknowledge it. Therefore, it is necessary to present the proof for [its] specification.

But if this is based on *Ijmâ'*, *ijmâ'* is constituted on the continuance of prayer in the case of the absence [of water]. In the case of its presence, this is subject to dispute—and there is no *ijmâ'* with dispute.

If the *ijmâ'* were to include the state of the presence [of water], then the dissenter would be violating the *ijmâ'*, just as one who disputes the termination of prayer upon the blowing of the winds or the rising of the dawn is violating the *ijmâ'*. For the constitution of the *ijmâ'* is not stipulated by the absence of the winds, but is constituted on the condition of the absence of water. So, if it is found, there is no *ijmâ'*. /1:226/

Therefore, it is necessary to draw analogy on the basis of a common denominator between the case of presence [of water] and the case of [its] absence, the latter being subject to *ijmâ'*. But applying *istishabu'l-ijmâ'* when *ijmâ'* does not exist is absurd.

This is similar to rational proof corroborating the original

state of freedom, provided that revealed proof does not furnish evidence. Therefore, there remains for it no proof by the existence of revealed proof. But here *ijmâ'* is constituted on the condition of the absence [of water], while *ijmâ'* is lacking concerning [its] presence.

Now this is subtle. That is, [regarding] every proof opposing disagreement itself, its *istis̱ẖâb* cannot be upheld simultaneously with dispute because *ijmâ'* is contradicted by differing per se, since there is no *ijmâ'* with dispute—in contradistinction to the generic [import of a statement], the Text, and the rational proof. For difference of opinion does not oppose them, and the opponent acknowledges that the generic [import of a statement] includes, by its linguistic mode, the locus of disagreement.

For his statement, صلى الله عليه وسلم, "There is no fast for him who did not intend to fast from /1:227/ night," includes, in its linguistic mode, the fast of *Ramaḏân*, despite the disagreement of the opponent. For he says, "I concede the inclusion of the linguistic mode; however, I specify it with a proof." He must, then, furnish the proof. But here the opponent does not concede *ijmâ's* inclusion of the locus of disagreement, since *ijmâ'* is impossible together with disagreement, while it is not impossible that the generic linguistic mode come together with the proof. Therefore, attention must be paid to this subtlety.

If it is said: *Ijmâ'* forbids dispute. So how can it be removed by dispute?

We shall say: This difference of opinion is not prohibited by

ijmâ', and the reason the dissenter is not breeching *ijmâ'* is that *ijmâ'* is constituted only in the case of the absence [of water], not in the case of [its] presence. So one who conjoins the presence with the absence, he must furnish a proof.

If it is said: /1:228/ The proof indicating the rectitude of the commencement [of prayer] is, then, indicative of its continuation, until a proof arises for its termination.

We shall say: Let this proof be examined. Is it generic or a clear Text that includes the case of the presence [of water] or not? But then if it is *ijmâ'*, the *ijmâ'* is conditional on the absence [of water]. Therefore, it is not a proof for the [case of] presence.

If it is said: On what basis do you object to one who says, "The basic rule is that all that has been established continues until the presence of a terminator." Therefore, continuation does not in itself require proof. Rather, establishment is what is in need of proof, just as when the death of Zayd is established, or the building of a house, or a town. Their continuance is inherent, not based on [another] cause.

We shall say: This is baseless conjecture because it is possible for all that has been established to continue or not continue. /1:229/ Therefore, its continuation requires a cause and a proof besides the proof of its establishment. If it is not of the natural proof—that is a person who dies does not revive, and a house when it is built does not collapse until it is destroyed or a long time passes—we will not known its continuation by its mere

establishment, just as if it is reported about the *Amîr's* sitting, eating, or his entry into the house, while there is no natural proof for the continuation of these conditions. For we cannot at all determine the continuation of these conditions. Similarly, the *Sharî'a* report on the continuation of prayer in the absence of water is not a report on its continuation with the presence of [water]. Therefore, its continuation needs another proof.

If it is said: One is not commanded with the commencement [of prayer] only, but rather, with its beginning and completion.

We shall say: Certainly, he is commanded to start /1:230/ and complete in the absence [of water]. However, with the presence [of water], this is the locus of disagreement. Therefore, what is the proof that one is commanded, in the case of its presence, to complete [the prayer]?

If it is said: This is a result of him being prohibited from nullifying an act [i.e., the prayer], and using the water [requires] *voiding* the act.

We shall say: This position is shifting to where we have led you and is admitting to the need of proof. However, this proof, though it is weak; exposing its weakness is not the task of an *usûlî*. Yet, it is weak, because if you mean that *void* is to nullify its reward, then we do not concede that one is not rewarded for its doing. However, if you mean that He obliged him with something like it, the [action's] rectitude does not mean that doing its like is not obligatory, based on what we established previously.

If it is said: The basic rule is /1:231/ that something cannot be obliged on the basis of doubt, and the obligation of recommencing the prayer is doubtful. Therefore, certainty cannot be removed based on it.

We shall say: This is contradicted by [the fact] that the obligatory continuation of this prayer is doubtful. And the discharge of responsibility by this prayer, when water is found, is also doubtful. Thus, certainty cannot be removed by it. Further, we say that those who oblige renewal require it with a proof that preponderates in the mind, just as the original state of freedom is removed with a preponderating conjectural proof.

And why should it not be so! when certainty can be eliminated by doubt in some situations. Hence, the questions regarding this are conflicting, for example, when a corpse is confused with a duly slaughtered animal; or a foster sister is confused with an unrelated woman; or pure water is confused with impure water; or one forgets one of the five prayers. /1:232/

They argue that Allah, تعالى, consented to the nonbelievers' demand for proof from the messengers when He said: *"You desire to bar us from what our fathers worshipped? Then bring us a manifest authority."*[2] Hence, people have occupied themselves with proofs that change *istishâb*.

We shall say: This is because they did not maintain the

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[2]Qur'ân, 14:10.

istishâb of *ijmâ'*, but rather, they maintained the original state of negation, which has been established by reason, since the basic rule concerning human nature is that one is not [naturally] a prophet. This can be known only through miracles and signs. Therefore, they are correct in requesting proof, but wrong in their stand upon the religion of there forefathers simply on the basis of ignorance without any proof.

II. DISCUSSION: They have differed with regard to the disclaimer. Must he bring a proof?

Some people have said that he is not required to bring proof. Others say that proof is necessary. A third group distinguishes between rational and *Sharî'a* matters. Thus they require the proof of rational matters to the exclusion of those of the *Sharî'a*.

But the appropriate position is that what is not necessary cannot be known except through proof, and negation in its regard is just like affirmation.

To be more precise therein, it should be said to the denier, "Regarding that which you have claimed negation, have you known certainly its negation, or are you doubtful about it?"

If he admits doubt, then one cannot demand proof from the doubtful because he admits his ignorance and lack of knowledge. But if he says, "I am certain about the negation," it should be said, "[About] this certainty of yours, did it accrue from necessary evidence or from a proof?"

But [claim to] necessary knowledge of negation is discounted. For we know that we are not in a whirl of sea water, nor sitting on

the wing of an Eagle; and that the river Nile is not before us!

/1:234/ The knowledge of negation is not counted as necessary. So if one does not know it necessarily, then one knows it only on blind faith, or on the basis of conjecture.

Now, blind faith does not impart knowledge, for error is possible for a blind follower. Moreover, a blind follower, by definition, admits his own blindness, and he claims insight only from others. But if it [his negation] is from conjecture, then he must demonstrate it, and this is the basis for proof. Upon relinquishing the proof on the part of the denier, two heinous difficulties that necessarily follow are corroborated.

The first is that the proof of the denier of the temporal origination of the world, the existence of the Maker, prophethood, the prohibition of adultery, alcohol, eating carrion, and the prohibited degree of marriage will not be necessary—and this is absurd.

The second is that if the proof is removed from these [people], a person affirming could express the intent of his affirmation through negation; for he can say, instead of /1:235/ '*muhdath*' [an originated object],' *non-eternal;* and instead of saying *able, not unable,* and so forth.

Now they have two doubts regarding this issue.

One doubt is that they say the [burden of] proof is not on the defendant debtor because he denies [the claim].

The answer is [based] on four grounds.

First, this is not because he is a denier. Nor is it because

reason indicates the removal of proof from the denier. Rather, this is based on the *Sharî'a* proof, due to his statement, صلى الله عليه وسلم, "The [burden] of evidence is upon the plaintiff, and the oath is upon the denier."[3] Nor is it possible to draw analogy from another case on its basis, for the *Sharî'a* has called for it only because of necessity, since there is no way to establish a proof on denial. For this can be known only if a number constituting *tawâtur* /1:236/ would follow this man from the very first moment of his existence until the time of the claim. Thus, the negation of the reason of necessity may be known by a statement or by way of action through constant observance of [him].

So how can he be charged with establishing a proof on something upon which it is impossible to establish a proof. In fact, even the plaintiff is not required to show proof because the statement of two witnesses does not achieve sure knowledge. Rather, it [achieves] an assumption of the effect of the necessitating cause. This is in regard to what occurred in the past.

As for the present, the witness does not know the liability of a person, for his exoneration is possible through payment or remission of the debt. Furthermore, there is no way for people to know the liability of a person or his exoneration except by a statement of Allah, تعالى, and the saying of the infallible Messenger.

It ought not be assumed that a proof is required from the

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[3]For the authenticity of the *hadîth* and its wordings, see al-'Ajlûnî, *Kashf al-Khafâ'*, 1:342-343; also, Zayla'î, *Nasb al-Râyyah li Ahâdîth al-Hidâya*, 4:95-99.

plaintiff, as well, for even the statement of the witness becomes proof only on the basis of *Sharî'a* ruling. So if this is possible, then the oath of the defendant is likewise necessary. Thus let this be proof.

The second answer is that the defendant claims that he necessarily knows /1:237/ his own innocence, since he is certain that he neither caused harmed nor assumed [liability]. Yet all other people are incapable of knowing this, for no one knows it except Allah, تعالى. Therefore, in the sphere of rational matters, it is impossible for a denier to necessarily claim the knowledge of negation.

But if he states that he alone knows it in such a way that it is not possible for anyone other than Allâh to share it with him, then, in that case, he should not be asked for proof, just as when he tells about himself of not being hungry or not being afraid, and so on. In this case, affirmation and negation equiponderate. For should he claim the existence of hunger or fear, then he must self-evidently know them, and it is difficult for others to know them. Furthermore, negation and affirmation are common to rational matters, and negation and affirmation equiponderate with respect to perceptibles, as well.

The third [answer] is that the denier is obliged to show proof, namely an oath, before the court, just as the plaintiff must bring proof, /1:238/ namely evidence.

But this is weak, since the oath may be false. So what is its evidence with respect to reason if it were not for the consideration

of *Sharî'a*? Indeed, it is like evidence, for the statement of the two witnesses may also be wrong and false, and utilizing it from this point of view is correct, as mentioned before.

Or it may be said: Just as the negator in the seat of judgement is obliged to support his side in addition to his claim of denial, let it then be mandatory regarding the *ahkâm*. This too has validity.

The fourth [answer] is that possession on the part of the defendant is proof for negating the ownership of the plaintiff. But this is weak because possession annuls in the *Sharî'a* the claim of the plaintiff, otherwise possession can come about by usurpation or loan. So what evidence does it have?

The second doubt is how could proof be required for denial, while it is impossible, as is raising a proof against one's freedom from obligation.

We shall say: Its impossibility is not conceded to, for the dispute /1:239/ either concerns matters of reason or *Sharî'a*.

As for matters of reason, it is possible to prove their negation on the grounds that their affirmation leads to absurdity, and that which leads to absurdity is itself absurd. For Allah, تعالى, has said: *"If there were gods in the heavens and the Earth other than Allâh, they would surely go to ruin."*[4] But it is known that they [the heavens and the Earth] are not ruined. Thus, this proves the

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[4] Qur'ân, 21:22.

negation of a second [god].

It is also possible to establish this negation by a conditional syllogism, which we have called in our introduction 'the way of [mutual] entailment.' For all affirmation has necessary consequences. Thus, the negation of the consequent is proof for the negation of the antecedent. Similarly, a challenger is not a prophet; for were he a prophet, he would possess a miracle, since obliging the absurd is absurd. So this is one approach which is correct.

The **second** approach is that it is said to one who affirms, "If what you have claimed is established, it should be known either necessarily or through a proof—and there is no necessary [knowledge] with disagreement; nor is there proof. So, this indicates negation."

But this is corrupt, for it can be turned against the denier. It would be said to him, "If the rule is negated, /1:240/ its negation would be known necessarily or by a proof. But there is no necessity, nor is there a proof."

Nor is it possible for him to adhere to *istiṣḥâb* by saying, for example, that the original [premise] is the nonexistence of a second god, for whoever claims this must show proof, since it is not conceded to him that the original premise is nonexistence, in contradistinction to the case of original freedom. For reason proves the nonexistence of rule prior to revelation, in view of its proof that ruling is laying of obligation.

But the Address is from Allah, تعالى, while obligating the absurd is absurd. However, if He were to charge us with obligation

without a messenger confirmed by a miracle, who conveys to us His commandments, this would be the laying of an absurd obligation. Therefore, the original state of freedom is based on rational proof, contrary to the nonexistence of the second god.

As for their statement that were a second god to be proven, then proof would be incumbent upon Allâh, تعالى, this is arbitrary from two aspects:

One of them is that it is possible that Allâh, تعالى, may not raise proof for certain things, and takes exclusive possession /1:241/ of its knowledge.

The **second** is that it is possible that Allâh has raised proof for [these things] but we are not aware of it. But some of the privileged and prophets perceive it, or a person who has been privileged with a sixth sense and a different sensibility. Indeed, what can be conclusively stated is that the prophets comprehend matters that we do not comprehend.

Furthermore, within the possibilities of Allâh are matters that are not within human power to know. Also, it is possible that Allâh has attributes that cannot be comprehended by these senses, nor by this mind, but rather through a sixth sense or a seventh. Indeed, it is not at all impossible that the words '*yad* ' and '*wajh*' [in the Qur'ân] express attributes that we do not understand, and for which there is no proof.

Moreover, even if revelation had not arrived, their negation would be wrong. Therefore, perhaps there are attributes of this sort that revelation has not expressedly shown. Nor do we have

the power to comprehend them. Indeed, if He had not created hearing for us we would have denied sounds, and we would not have understood them. And if He did not create for us a taste for poetry, we would have denied the distinction [drawn] by a master of metrics between metered and unmetered [poetry]. So how can we know if there is in the power /1:242/ of Allâh, تعالى, kinds of sensibilities that had he created for us we would comprehend through them other affairs that we now deny. Therefore, this rejection is based on ignorance, shooting in the dark.

As for *Sharî'a* matters, the proofs for them have come to pass on the basis of *ijmâ'*, as in negating the obligation of fasting in *Shawwâl* and the late morning prayer; or by evident Text, as in his statement, صلى الله عليه وسلم, "There is no *zakât* on jewelry, and there is no *zakât* on a stall-fed animal"; or by *qiyâs*, as in drawing analogy from vegetables to pomegranate, or a watermelon specified as exempt from *zakât*, like the statement of a reporter, "There is no *zakât* on pomegranate and watermelon"; rather, they are free; the Messenger of Allah, صلى الله عليه وسلم, exempted them.

But sometimes this kind of proof is useless. Therefore, we must search for avenues of affirmation. When we do not find [affirmation], we have recourse to *istiṣḥâb* for the original [state of] negation, established by the proof of reason, which is a [valid] proof in the absence of the arrival of revelation.

Moreover, wherever we have cited in our writings on *khilâf* that proof is not incumbent on a denier, we meant thereby that there was no revealed proof for it because the *istiṣḥâb* /1:243/ of original freedom is sufficient for it, by which we would have [been

compelled] to judge, but for the raising up of the Messenger and the arrival of revelation.

If it is said: Rational proof is conditional upon the absence of revelation, and the absence of revelation is unknown and the lack of its knowledge does not prove its nonexistence. Furthermore, there is no way to claim sure knowledge of its negation, for this cannot be known.

We shall say: We have already clarified that sometimes its negation can be known, like the negation of the obligatoriness of fasting *Shawwâl* and [praying] the late morning prayer. But at times, it is assumed that some of those capable of research should investigate the *Sharî'a* channels; and conjecture therein is like [certain] knowledge, for it emanates from *ijtihâd,* since the [*mujtahid*] may say, "If this were there, I would have found it. But since I have not found it, despite my thorough search, this proves that it does not exist," just as the furniture seeker in the house after he has investigated [thoroughly].

If it is said: Is it not the case that penetrating inquiry has a defined end? In fact, for investigation there is a beginning, a middle, and an end. So when is it lawful for him to negate the proof from revelation changing [the original state of freedom]? /1:244/

We shall say: Whenever he recommences, he reflects to himself, then he knows that he has exhausted his full effort in investigation, like the searcher for furniture in the house.

If it is said: The house is circumscribed and the seeking of certainty in it is possible; but the avenues of *Sharî'a* are unlimited. For although the Book is limited, reports are not, and a narrator of a *hadîth* may be unacknowledged.

We shall say: If this were the case in the beginning of Islam before reports became widespread, then the duty of every *mujtahid* would have been the full exertion of his judgement until reports reached him. But if this were the case after the reports were related and the *sahîh* collections compiled, then whatever has entered in them is limited, according to their authorities. Moreover, they have now come to *mujtahids*, and they have cited them in the issues of dispute.

In sum, the rational proof's indication for the original negation is conditional on the absence of a changing [proof], like the implications of a general statement are conditional upon the absence of a specifying [proof]. Furthermore, for each one, /1:245/ that is, the specifying and the changing [proof], at times its negation can be known, and at times it is conjectured. Yet each one of them is a valid proof in *Sharî'a*.

This is the completion of the discussion of the Fourth Principle. Here also ends the discourse on the Second *Qutb*, which includes the well-spring of principle sources, namely, the Book, the *Sunna*, *Ijmâ'*, and *'Aql*.

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